2019 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

ACKNOWLEDGEMENTS

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this report. U.S. Trade Representative Robert E. Lighthizer gratefully acknowledges the contributions of all USTR staff to the writing and production of this report and notes, in particular, the contributions of Will Davis, Samuel Gruber, Julie McNees, Nathaniel Moulton, and Lida Weinstock.

Thanks are extended to partner Executive Branch members of the Trade Policy Staff Committee (TPSC). The TPSC is composed of the following Executive Branch entities: the Departments of Agriculture, State, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Justice, Transportation, and Treasury; the Environmental Protection Agency; the Office of Management and Budget; the Council of Economic Advisers; the Council on Environmental Quality; the U.S. Agency for International Development; the Small Business Administration; the National Economic Council; the National Security Council; and, the Office of the United States Trade Representative; as well as non-voting member the U.S. International Trade Commission. In preparing the report, substantial information was solicited from U.S. Embassies.

Office of the United States Trade Representative
Ambassador Robert Lighthizer

LIST OF FREQUENTLY USED ACRONYMS

AD	Antidumping
AGOA	African Growth and Opportunity Act
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
BOP	Balance of Payments
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CVD	Countervailing Duty
DDA	Doha Development Agenda
DOL	U.S. Department of Labor
DSB	WTO Dispute Settlement Body
DSU	WTO Dispute Settlement Understanding
EU	European Union
FOIA	Freedom of Information Act
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GI	Geographical Indications
GPA	WTO Agreement on Government Procurement
GSP	Generalized System of Preferences
ICTIME	Interagency Center on Trade Implementation, Monitoring, and Enforcement
ILO	International Labor Organization
IPR	Intellectual Property Rights
ITA	WTO Information Technology Agreement
KORUS	United States-Korea Free Trade Agreement
MFN	Most-Favored Nation
MOU	Memorandum of Understanding
NAFTA	North American Free Trade Agreement
OECD	The Organization for Economic Cooperation and Development
SBA	U.S. Small Business Administration
SME	Small and Medium-Sized Enterprise
SPS	Sanitary and Phytosanitary
TAA	Trade Adjustment Assistance
TBT	Technical Barriers to Trade
TFA	WTO Trade Facilitation Agreement
TIFA	Trade and Investment Framework Agreement
TPRG	Trade Policy Review Group

TPSC .... Trade Policy Staff Committee
TRIMS .... Trade-Related Investment Measures
TRIPS .... Trade-Related Aspects of Intellectual Property
.... Rights
TRQ .... Tariff-Rate Quota
URAA .... Uruguay Round Agreements Act
USAID .... U.S. Agency for International Development
USMCA .... United States-Mexico-Canada Agreement
USTR .... United States Trade Representative
WTO .... World Trade Organization

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FOREWORD

SCOPE AND COVERAGE

The 2019 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 34th in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2019 Trade Policy Agenda and 2018 Annual Report, published by Office of the United States Trade Representative (USTR) in March.

In accordance with section 181 of the Trade Act of 1974, as added by section 303 of the Trade and Tariff Act of 1984 and amended by section 1304 of the Omnibus Trade and Competitiveness Act of 1988, section 311 of the Uruguay Round Trade Agreements Act, and section 1202 of the Internet Tax Freedom Act, USTR is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers. The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, including agricultural commodities and U.S. intellectual property; foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services; and U.S. electronic commerce. Such an inventory enhances awareness of these trade restrictions, facilitates U.S. negotiations aimed at reducing or eliminating these barriers, and is a valuable tool in enforcing U.S. trade laws and strengthening the rules-based system.

The NTE Report is based upon information compiled within USTR, the Departments of Commerce and Agriculture, other U.S. Government agencies, and U.S. Embassies, as well as information provided by the public in response to a notice published in the *Federal Register*.

This report discusses the largest export markets for the United States, covering 61 countries, the European Union, Taiwan, Hong Kong, and the Arab League. The discussion of Chinese trade barriers is structured and focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China section includes cross-references to other USTR reports where appropriate. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States. For example, USTR's Notorious Markets List for 2018 is still being finalized. Therefore, the absence of reference to notorious markets for any particular country in this report does not imply an absence of notorious markets nor a change in circumstance from last year's NTE Report.

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights.

The NTE covers significant barriers, whether they are consistent or inconsistent with international trading rules. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade 1994 (GATT 1994). Even a very high tariff does not violate international rules unless a country has made a commitment not to exceed a specified rate, *i.e.,* a tariff binding. Nonetheless, it would be a significant barrier to U.S. exports, and therefore covered in the NTE Report. Measures not consistent with international trade agreements, in addition to serving as barriers to trade and causes of concern for policy, are actionable under U.S. trade law as well as through the World Trade Organization (WTO).

This report classifies foreign trade barriers in eleven categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services, unduly hamper U.S. foreign direct investment or U.S. electronic commerce. The categories covered include:

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, customs barriers and shortcomings in trade facilitation, and other market access barriers);

- Technical barriers to trade (*e.g.*, unnecessarily trade restrictive standards, conformity assessment procedures, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products);

- Sanitary and phytosanitary measures (*e.g.*, trade restrictions implemented through unwarranted measures not based on scientific evidence);

- Subsidies, including export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets) and local content subsidies (*e.g.*, subsidies contingent on the purchase or use of domestic rather than imported goods);

- Government procurement (*e.g.*, "buy national" policies and closed bidding);

- Intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes and inadequate enforcement of intellectual property rights);

- Services barriers (*e.g.*, prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or regulatory standards, local-presence requirements, and unreasonable restrictions on what services may be offered);

- Barriers to digital trade (*e.g.*, barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the provision of Internet-enabled services, and other restrictive technology requirements);

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

- Competition (*e.g.*, government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets or abuse of competition laws to inhibit trade); and

- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption,[i] or that affect a single sector).

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements to make a determination on whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, "mutually advantageous market opportunities" to U.S. telecommunication products or services suppliers. The NTE Report highlights both ongoing and emerging barriers to U.S. telecommunication services and goods exports used in the annual review called for in Section 1377.

USTR continues to vigorously scrutinize foreign labor practices and to address substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. In addition, USTR has enhanced its monitoring and enforcement of U.S. FTA partners' implementation and compliance efforts with respect to their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and environmental measures in FTA countries, and USTR staff regularly work with FTA countries to monitor practices, and directly engages governments and other stakeholders in its monitoring efforts. The Administration has reported on these activities in the 2019 Trade Policy Agenda and 2018 Annual Report of the President on the Trade Agreements Program.

NTE sections also report the most recent statistical data on U.S. bilateral trade in goods and services, and compare these data to those of the preceding year. This information is reported to provide context for the reader. The merchandise trade data contained in the NTE are based on total U.S. exports, free alongside ship (f.a.s.)[ii] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce. The services data and direct investment are compiled by the Bureau of Economic Analysis (BEA) in the Department of Commerce. (NOTE: These data are provided in Appendix II, ranked according to the size of the market).

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

Wherever possible, this report presents estimates of the impact on U.S. exports, U.S. foreign direct investment, or U.S. electronic commerce of specific foreign trade barriers and other trade distorting practices. Where consultations related to specific foreign practices were proceeding at the time of this report's publication, estimates were excluded, in order to avoid prejudice to these consultations.

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

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

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

The task of estimating the impact of nontariff measures on U.S. exports is far more difficult, since no readily available estimate of the additional cost these restrictions impose exists. Quantitative restrictions or import licenses limit (or discourage) imports and thus raise domestic prices, much as a tariff does. However, without detailed information on price differences between countries and on relevant supply and demand conditions, it is difficult to derive the estimated effects of these measures on U.S. exports. Similarly, it is difficult to quantify the impact on U.S. exports (or commerce) of other foreign practices, such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection.

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

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

With respect to investment barriers, no accepted techniques for estimating the impact of such barriers on U.S. investment flows exist. For this reason, no such estimates are given in this report. The same caution applies to the impact of restrictions on electronic commerce.

The NTE Report includes generic government regulations and practices that are not specific to particular products. These are among the most difficult types of foreign practices for which to estimate trade effects.

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

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

March 2019

Endnotes:

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

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

The United States has taken a leading role in addressing bribery and corruption in international business transactions and has made real progress over the past quarter century building international coalitions to fight bribery and corruption. Bribery and corruption are now being addressed in a number of fora. Some of these initiatives are now yielding positive results. These include: the Inter-American Convention Against Corruption (Inter-American Convention), which entered into force in March 1997; the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-bribery Convention), which entered into force in February 1999; and, the United Nations Convention Against Corruption, the first global anticorruption instrument, which entered into force in 2005.

The United States continues to push its anticorruption agenda forward. The United States promotes transparency and reforms that specifically address corruption of public officials. For example, the United States led other countries in concluding multilateral negotiations on the World Trade Organization (WTO) Trade Facilitation Agreement, which entered into force on February 22, 2017 and contains provisions on transparency in customs operations and avoiding conflicts of interest in customs penalties. The United States has also advocated for increased transparency of government procurement regimes as a way to fight corruption, including in the United States-Mexico-Canada Agreement (USMCA) and the WTO Government Procurement Agreement, which contain requirements for participating governments and their relevant procuring entities to avoid conflicts of interest and prevent corrupt practices. The United States is also playing a leadership role on these issues in the Asia-Pacific Economic Cooperation (APEC) Forum and other fora.

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

ALGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Algeria was $3.4 billion in 2018, a 22.7 percent increase ($622 million) over 2017. U.S. goods exports to Algeria were $1.3 billion, up 18.0 percent ($190 million) from the previous year. Corresponding U.S. imports from Algeria were $4.6 billion, up 21.4 percent. Algeria was the United States' 76th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Algeria (stock) was $3.0 billion in 2017 (latest data available), a 1.5 percent increase from 2016.

IMPORT POLICIES

Tariffs and Taxes

Algeria is not a Member of the World Trade Organization. Goods imported into Algeria currently face a range of tariffs, from zero percent to 70 percent. Nearly all finished manufactured products entering Algeria are subject to a 30 percent tariff rate, but some limited categories are subject to a 15 percent rate. Goods facing the highest rates are those for which direct equivalents are currently manufactured in Algeria, including some pharmaceutical products. The few items that are duty free are generally European Union (EU)-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 EU-Algeria Association Agreement. In addition, most imported goods are subject to the 19 percent value-added tax, and an additional 0.3 percent tax is levied on a good if the applicable customs value exceeds DZD 20,000 (approximately $176.00). In January 2019, citing the need to encourage local production and ease pressure on the country's foreign exchange reserves, the Algerian government implemented new tariffs of 30 percent to 200 percent on a list of more than 1,000 manufactured and agricultural goods.

Nontariff Barriers

Import Licensing

The 2016 budget, signed into law on December 31, 2015, empowered the Ministry of Commerce to require import licenses for certain goods. Additional regulations released in January 2017 identified the following 22 categories as requiring import licenses: vehicles for tourism and resale, specialized and construction vehicles, concrete in various forms, concrete reinforcing bars, wire rod in various forms, wire rod used for concrete reinforcing, wood of various types, ceramics of various types, grey Portland cement, fresh or refrigerated beef, frozen beef, cheese, citrus fruits, apples, bananas, barley, garlic, corn, soybean meal, concentrated minerals and vitamins, phosphates, and double concentrated tomato. Some exceptions are permitted for products being imported for government use. The Algerian government's implementation in January 2019 of new tariffs (see above) was coupled with elimination of import license requirements for all products except vehicles.

Import Bans

Since 2010, Algeria's Ministry of Health has restricted the import of a number of pharmaceutical products and medical devices. That year, the Ministry of Health published a list of 357 pharmaceutical products banned from importation. In 2007, the Algerian government had instituted a regulation that bans the import of used medical equipment without a special exception. The government has applied the rule broadly to block the re-importation of machinery sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

All types of used machinery are banned from entry into Algeria. All products containing pork or pork derivatives are prohibited.

Import Restrictions

Vehicle imports through dealers were prohibited in 2017. Individuals were able to purchase a vehicle overseas on a personal basis and import it to Algeria. Due to customs, VAT, and other taxes, vehicles cost more than double the market rates when purchased by individuals overseas and imported. The government released a new book of specifications concerning the automotive industry in December 2017. Changes in regulations did not address specific import quotas, but indicated the government would permit imports of automotive kits only for automotive companies who engage in local assembly or manufacturing. Minimum local integration rates for assembly plants will be 15 percent after three years, and 40 percent to 60 percent after five years. The government set import quotas for fully assembled vehicles at zero for 2018 and did not allow the importation of cars by dealers during the year. The government has not yet announced quotas for 2019.

Customs Barriers and Trade Facilitation

Clearing goods through Algerian customs is the most frequently reported problem facing foreign companies operating in Algeria. Delays can take weeks or months, in many cases without explanation. In addition to a certificate of origin, the Algerian government requires all importers to provide certificates of conformity and quality from an independent third party. Customs requires shipping documents be stamped with a "Visa Fraud" note from the Ministry of Commerce, indicating that the goods have passed a fraud inspection, before the goods are cleared. Many importations also require authorizations from multiple ministries, which frequently causes additional bureaucratic delays, especially when the regulations do not clearly specify which ministry's authority is being exercised. Storage fees at Algerian ports of entry are high and the fees double when goods are stored for longer than 10 days.

Regulations introduced in October 2017 require importers to deposit a financial guarantee equal to 120 percent of the cost of the import 30 days in advance, which especially burdens small and medium-sized importers that often lack sufficient cash flow.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

In March 2015, the Algerian government enacted various new safety requirements for imported vehicles, with a focus on passenger automobiles. Algerian officials assert that these new requirements apply to all vehicles, but the requirements appear to affect imported vehicles in a disproportionate manner. Under the procedures intended to enforce the requirements, all vehicles entering the country must be accompanied by a "certificate of conformity" before they are inspected by a representative of the Ministry of Industry and Mines. Algeria also requires this certificate in order to obtain the letter of credit necessary to finance a vehicle importation.

Food Products

Algeria requires imported food products to have at least 80 percent of their shelf life remaining at the time of importation.

Sanitary and Phytosanitary Barriers

The Algerian government currently bans the importation, distribution, or sale of seeds that are the products of biotechnology. There is an exception for biotech seeds imported for research purposes. U.S. and Algerian veterinary authorities began negotiations on export certificates to allow for the importation of U.S. chicken hatching eggs and day-old chicks, semen, embryos, beef cattle, and dairy breeding cattle. Since to date no agreements have concluded, U.S. producers are unable to export these products to Algeria.

GOVERNMENT PROCUREMENT

Algeria announced in August 2015 that all ministries and state-owned enterprises (SOEs) would be required to purchase domestically manufactured products whenever available. It further announced that the procurement of foreign goods would be permitted only with special authorization at the ministerial level and if a locally made product could not be identified. Algeria requires approval from the Council of Ministers for expenditures in foreign currency that exceed 10 billion Algerian dinars ($87 million). In 2017, this requirement delayed payments to at least one U.S. company.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Algeria remained on the Priority Watch List in the 2018 Special 301 Report. Significant challenges remain with respect to fair and equitable market access for U.S. intellectual property (IP) right holders in Algeria, notably the product import bans still in place that disadvantage U.S. pharmaceutical and medical device manufacturers. Further, while Algeria has taken steps to raise awareness of IP issues and has engaged with the United States on improving IP rights protection and enforcement, significant IP-related deficiencies are still present. Concerns remain regarding the enforcement of anti-piracy statutes, including those combating the use of unlicensed software. Also, Algeria does not provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

In February 2018, Algeria passed a law requiring electronic commerce operators conducting business in Algeria to register with the government and to provide services from a data center located in Algeria. Such data localization requirements impose unnecessary costs on service suppliers, particularly foreign firms, which are more likely to depend on globally distributed data centers.

INVESTMENT BARRIERS

Algeria’s investment law requires Algerian ownership of at least 51 percent in all projects involving foreign investments. As there is no single process for registering foreign investments, prospective investors must work with the ministry or ministries relevant to a particular project to negotiate, register, and set up their businesses. U.S. businesses have commented that the process is subject to political influence, and that a lack of transparency in the decision making process makes it difficult to determine the reasons for any delays.

Algerian bureaucratic requirements cause significant delays and deter many companies from attempting to enter the market. For example, several U.S. companies, particularly in the pharmaceutical sector, have reported difficulties in renewing their operating and market access licenses. Without a valid license, the process for obtaining import authorization is extremely slow.

OTHER BARRIERS

State-Owned Enterprises

State-owned enterprises (SOEs) comprise about two-thirds of the Algerian economy. The national oil and gas company Sonatrach is the most prominent SOE, but SOEs are present in all sectors of the economy.

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $2.2 billion in 2018, a 21.0 percent increase ($378 million) over 2017. U.S. goods exports to Angola were $527 million, down 34.9 percent ($283 million) from the previous year. Corresponding U.S. imports from Angola were $2.7 billion, up 3.6 percent. Angola was the United States' 99th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Angola (stock) was $780 million in 2017 (latest data available), a 20.7 percent increase from 2016.

TRADE AGREEMENTS

Angola is a member of the Southern African Development Community (SADC). Angola signed the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Angola’s Most Favored Nation (MFN) applied tariff rate averaged 23.2 percent for agricultural products and 9.5 percent for non-agricultural products in 2017 (latest data available). Angola’s simple average WTO bound tariff rate is significantly higher at 52.7 percent for agricultural products and 60.1 percent for non-agricultural products. Angola’s maximum WTO bound tariff rate for all products is 80 percent, and 100 percent of Angola’s tariff lines are bound at the WTO.

Angola has delayed implementation of the 2003 SADC Protocol on Trade, which seeks to reduce tariffs, due to concerns that implementation would lead to a large increase in imports, particularly from South Africa.

Taxes

On May 9, 2018, Angola approved a new customs regime that exempts imports of household products, medicines, and hospital equipment from taxes. The new customs regime also includes a reduction of the consumption tax and customs duties for imports of malt beer, tobacco, lamb, and goat meat. The regime assigns minimum rates for the import of essential goods and other goods not locally manufactured. Medicines, educational material (*i.e.*, schoolbooks), and automotive parts imported by automotive assembly investors in Angola remain exempt from customs duties under the new customs regime.

Within the framework of its Tax Reform and Public Finance Policy, the Angolan government has established agreements to avoid double taxation with China, Portugal, and the United Arab Emirates.

Nontariff Barriers

Import Licensing

The importation of certain goods may require specific authorization from various government ministries, which can result in delays and extra costs. Goods that require ministerial authorization include: (1) pharmaceutical substances and saccharine and derived products (Ministry of Health); (2) fiscal or postal stamps, radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); (3) weapons, ammunition, fireworks, and explosives (Ministry of Interior); (4) plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); (5) poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and, (6) other goods imported to be given away as samples (Ministry of Customs).

Importers who possess a valid general import license issued by Ministry of Trade and a specific import license issued by the Ministry of Health may import pharmaceuticals products.

Agricultural Biotechnology

Angola does not allow the use of agricultural biotechnology in production, and imports containing genetically engineered (GE) components are limited to food aid. In December 2014, the Council of Ministers approved Decree No. 92/04 as a provisional measure pending the establishment of a comprehensive National Biosafety System capable of properly controlling the importation, entry, use, and eventual production of GE organisms in the country.

Foreign Exchange Restrictions

Foreign exchange control applies in some international trade operations related to payments for imports and is at times subject to pre-authorization from the National Bank of Angola (BNA). In June 2018, the BNA announced that letters of credit would be the preferred financial instrument for import and export transactions, and mandatory for all international trade transactions above €100,000 (approximately $112,500).

Customs Barriers and Trade Facilitation

Administration of Angola's customs service has improved in the last few years but remains a barrier to market access due to a reported lack of transparency and impartiality.

Under Presidential Decree No. 63/13, pre-shipment inspection of imports is no longer mandatory. However, traders often contract for pre-shipment inspection services from private inspection agencies. On November 7, 2017, the Angolan government terminated its contract with Bromangol, a private laboratory that dominated the inspection market and whose fees some importers reported as excessive.

Any shipment of goods equal to or exceeding $1,000 requires use of a clearing agent. The number of clearing agents increased from 55 in 2006 to 232 in 2015 (latest data available). However, competition among clearing agents and reduced importing activity have not reduced fees for such agents, which typically range from one percent to two percent of the declared import value.

Although Angola has not ratified the WTO Trade Facilitation Agreement (TFA), it has availed itself of the flexibilities in Section II of the TFA and has submitted its Category A commitments to the WTO Secretariat. Angola has not yet specified the technical assistance and capacity building assistance needed in order to implement Category C commitments**.**

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Technical regulations, standards, testing and certification procedures for imports remain poorly documented, creating unwarranted burdens to trade.

All imports classified in Chapters 2 to 23 of the Harmonized Tariff Schedule (including animal and vegetable products and foodstuffs) have to be laboratory tested.

Sanitary and Phytosanitary Barriers

The import of animal, plant, and related products requires a sanitary and phytosanitary certificate from the Ministry of Agriculture, Health, or Fisheries.

GOVERNMENT PROCUREMENT

Angola's government procurement process lacks transparency and fails to promote competition among suppliers. Information about government projects and procurements is often not readily available from the appropriate authorities, and the government does not have an electronic procurement portal. Although calls for bids for government procurements are sometimes published in the government newspaper, *Jornal de Angola*, many contracting agencies have already formed a preference for a specific firm, even before receiving all of the bids.

The latest public procurement law, Law National Assembly Law No. 9, entered into force on September 16, 2016, and, encompasses both public procurement and rules on the performance of some contracts. This law represents an effort to reform and modernize Angola's procurement regime, and is a condition of an ongoing African Development Bank loan to support the reform of the electric power sector in Angola. Under Article 53 and Annex V of the law, foreign companies are only allowed to compete directly on tenders with values greater than 182 million kwanzas (approximately $587,097) for goods and services, and greater than 500 million kwanzas (approximately $1,612,903) for public works.

Angola is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Intellectual property (IP) rights are administered by the Ministry of Industry (which is responsible for trademarks, patents, and designs) and by the Ministry of Culture (which is accountable for authorship, literary, and artistic rights). Angola is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty. Although the Angolan National Assembly continues to work to strengthen existing IP legislation, IP rights protection and enforcement remain weak. Trade in counterfeit and pirated goods is widespread. Although the Ministry of Commerce tracks and monitors the seizures of counterfeit and pirated goods, it only publishes these statistics on an ad-hoc basis.

INVESTMENT BARRIERS

Angola can be a difficult environment for foreign investors.

On August 10, 2018, the Government of Angola enacted a new private investment law aimed at facilitating business and contributing to the creation of a business environment more conducive to investment. The new law removed the previous requirement that foreign investors identify a local partner with a 35 percent stake prior to investing in priority sectors, thereby allowing foreign investors to own investments in their entirety. The law also eliminated minimum levels of foreign direct investment and established firm sunset clauses for tax incentives. In addition to changes to the investment legal framework, the government created the new Agency for Private Investment and Exports Promotion (AIPEX), a single state-run agency with the goal of facilitating investment and export processes.

The new law does not apply, however, to investment in the petroleum, diamond, and financial sectors, which remain governed by sector-specific legislation. For example, legislation for the petroleum sector requires most foreign oil services companies to form joint venture partnerships with local companies. Foreign petroleum companies also face local content requirements requiring them to acquire low capital investment goods and services from Angolan-owned companies. For activities requiring a medium level of capital investment and a higher level of expertise (not necessarily specialized), foreign companies may only participate in association with Angolan companies. The Foreign Exchange Law for the Petroleum Sector requires that all petroleum, oil, and gas companies use Angola-domiciled banks to make all payments, including payments to suppliers and contractors located outside of Angola. However, these companies can make payments using foreign domiciled banks as long as they can show that payments are for services not provided in Angola.

Despite aging oil fields and a steady drop in oil production, the oil sector accounted for about 64 percent of tax revenues and more than 95 percent of Angolan exports in 2017. Oil revenues are the dominant source of foreign exchange deposits for the Central Bank. Starting in late 2014, as a direct result of the further decline in oil prices, foreign exchange deposits diminished. The loss of dollar-denominated correspondent banking relationships for Angolan banks has complicated international transfers and payments and exacerbated imbalances in the foreign exchange market. From the beginning of the year, the government has pursued a controlled adjustment of the exchange rate with the goal of substantially reducing the gap between the official exchange and black market exchange rate. By late August, the government had devalued the local currency by over 50 percent.

OTHER BARRIERS

Bribery and Corruption

In 2018, President Lourenço prioritized the fight against corruption, notably through the dismissal of high ranking officials in state companies and government agencies, the dissolution of monopolies, enactment of a capital repatriation law, and the creation of a one-stop agency to lead anti-corruption efforts. However, corruption remains prevalent in Angola for many reasons, including an inadequately trained civil service, a highly centralized bureaucracy, antiquated regulations, and a lack of uniform implementation of anticorruption laws. “Gratuities” and other facilitation fees often are requested to secure quicker service and approval. It is common for Angolan government officials to have substantial private business interests that are not publicly disclosed. Likewise, it is difficult to determine the ownership of some Angolan companies and the ownership structures of banks. Access to investment opportunities and public financing continues to favor those connected to the government and the ruling party. Laws and regulations regarding conflicts of interest, though now more in the public discourse, are yet to be widely implemented or enforced. Some investors report pressure to form joint ventures with specific Angolan companies believed to have connections to political figures.

ARAB LEAGUE

The 22 Arab League members are the Palestinian Authority and the following countries: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. The effect of the Arab League's boycott of Israeli companies and Israeli-made goods (originally implemented in 1948) on U.S. trade and investment in the Middle East and North Africa varies from country to country. On occasion, the boycott can pose a barrier (because of associated compliance costs and potential legal restrictions) for individual U.S. companies and their subsidiaries doing business in certain parts of the region. However, it has for many years had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries. About half of the Arab League members are also Members of the World Trade Organization (WTO) and are thus obligated to apply WTO commitments to all current WTO Members, including Israel. To date, no Arab League member, upon joining the WTO, has invoked the right of non-application of WTO rights and obligations with respect to Israel. Though Egypt and Jordan, having signed peace treaties with Israel, regularly publish official statistics regarding their trade with Israel, such statistics from other Arab League members either are not published at all or are not regularly updated.

The United States has long opposed the Arab League boycott, and U.S. Government officials from a variety of agencies frequently have urged Arab League member governments to end it. The U.S. Department of State and U.S. embassies in relevant Arab League host capitals take the lead in raising U.S. concerns related to the boycott with political leaders and other officials. The U.S. Departments of Commerce and Treasury and the Office of the United States Trade Representative monitor boycott policies and practices of Arab League members and, aided by U.S. embassies, lend advocacy support to firms facing boycott-related pressures.

U.S. antiboycott laws (the 1976 Tax Reform Act (TRA) and Anti-boycott Act of 2018, Part II of the Export Control Reform Act of 2018, Subtitle B, Pub. L. 115-232 (ECRA)) require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. The Arab League boycott of Israel was the impetus for the creation of U.S. antiboycott authorities during the 1970s and as a practical matter continues to be the principal boycott with which U.S. companies are concerned. The ECRA's antiboycott provisions, enforcement of which is overseen by the Department of Commerce's Office of Antiboycott Compliance (OAC), prohibit certain types of conduct by U.S. persons (including businesses) undertaken in support of any unsanctioned foreign boycott maintained by a country against a country friendly to the United States, including the Arab League boycott of Israel. Prohibited activities include, *inter alia*, agreements by U.S. companies to refuse to do business with a boycotted country, furnishing by U.S. companies of information about business relationships with a boycotted country, and implementation by U.S. companies of letters of credit that include boycott terms. The TRA's antiboycott provisions, administered by the Department of the Treasury and the Internal Revenue Service, deny certain foreign tax benefits to companies that agree to requests from boycotting countries to participate in certain types of boycotts.

The U.S. Government's efforts to oppose the Arab League boycott include alerting appropriate officials in boycotting countries to the presence of prohibited boycott requests and the adverse impact of those requests on both U.S. firms and on Arab League members' ability to expand trade and investment ties with the United States. In this regard, U.S. Department of Commerce/OAC officials periodically visit Arab League members to consult with appropriate counterparts on antiboycott compliance issues. These consultations provide technical assistance to those counterparts to identify language in commercial documents with which U.S. businesses may or may not comply.

Boycott activity can be classified according to three categories. The primary boycott prohibits the importation of goods and services from Israel into the territory of Arab League members. This prohibition may conflict with the obligation of Arab League members that are also Members of the WTO to treat products of Israel on a most favored nation basis. The secondary boycott prohibits individuals, companies (both private and public sector), and organizations in Arab League members from engaging in business with U.S. firms and firms from other countries that contribute to Israel's military or economic development. Such foreign firms may be placed on a blacklist maintained by the Central Boycott Office (CBO), a specialized bureau of the Arab League; the CBO often provides this list to other Arab League member governments, which decide whether, or to what extent, to implement it through national laws or regulations. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

Individual Arab League member governments are responsible for enforcing the boycott, and enforcement efforts vary widely among them. Some Arab League member governments have consistently maintained that only the Arab League as a whole can entirely revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion; thus, a number of governments have taken steps to dismantle various aspects of their national boycotts. The U.S. Government has on numerous occasions indicated to Arab League member governments that their officials' attendance at periodic CBO meetings is not conducive to improving trade and investment ties, either with the United States or within the region. Attendance of Arab League member government officials at CBO meetings varies; a number of governments have responded to U.S. officials that they only send representatives to CBO meetings in an observer capacity, or to push for additional discretion in national enforcement of the CBO-drafted company blacklist.

The current situation in individual Arab League members is as follows:

ALGERIA: Algeria does not maintain diplomatic, cultural, or direct trade relations with Israel, though indirect trade reportedly takes place. The country has legislation in place that in general supports the Arab League boycott, but domestic law contains no specific provisions relating to the boycott and government enforcement of the primary aspect of the boycott is reportedly sporadic. Algeria appears not to enforce any element of the secondary or tertiary aspects of the boycott.

COMOROS, DJIBOUTI, AND SOMALIA: None of these countries has taken steps to effectively enforce the Arab League boycott. The government of Djibouti currently does not enforce any aspect of the boycott; however, there is little direct trade between Djibouti and Israel.

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Islamic Development Bank. The revolution and resultant political uncertainty in Egypt since early 2011 introduced some uncertainty with respect to future Egyptian approaches to boycott-related issues, but thus far the Egyptian government has affirmed its continued commitment to the peace treaty.

IRAQ: As a matter of policy, Iraq does not adhere to the Arab League boycott. Most Iraqi ministries and state-owned enterprises have agreed not to comply with or have discontinued regulations enforcing the boycott, following a 2009 Council of Ministers decision to cease boycott-related implementation practices. However, individual Iraqi government officials and ministries continue to violate that policy. U.S. companies and investors consider the existence of boycott-related requirements in procurement contracts and tenders issued by the Iraqi government as significant disincentives for doing business in the country. It is estimated that since 2010, U.S. companies have lost more than $1 billion in sales opportunities in Iraq due to Arab League boycott-related requests.

Despite the 2009 Iraqi Council of Ministers guidance to all ministries, the number of boycott-related requests transmitted to U.S. companies from Iraqi entities increased from 2009 to 2014. Requests emanated from several Iraqi government entities, including the Ministry of Health (MOH) and its procurement arm, the Iraqi State Company for Importation of Drugs and Medical Appliances (Kimadia), the Ministry of Planning, and the South Oil Company.

The MOH committed to the United States in January 2014 that it would stop issuing boycott-related requests. Since that time, however, the MOH has issued several boycott-related requests that negatively affected U.S. suppliers of medical and pharmaceutical products. The South Oil Company, which had stopped issuing tenders with boycott language several years ago, recently resumed issuing tenders containing boycott-related language.

As a result of U.S. Government engagement with the government of Iraq, the number of prohibited requests received by U.S. persons, as reported to the Department of Commerce under its antiboycott regulations, has been on the decline, from 62 in 2015 to 31 in 2018. Officials from the State Department, Commerce Department, and the Office of the U.S. Trade Representative continue to engage with their respective interlocutors to ensure Iraqi officials are committed to investigating references to boycott-related language in contracts and tenders.

JORDAN: Jordan formally ended its enforcement of any aspect of the boycott when it signed the Jordanian-Israeli peace treaty in 1994. Jordan signed a trade agreement with Israel in 1995, and later an expanded trade agreement in 2004. While some elements of Jordanian society continue to oppose improving political and commercial ties with Israel as a matter of principle, government policy has sought to enhance bilateral commercial ties.

LEBANON: Since June 1955, Lebanese law has prohibited all individuals, companies, and organizations from directly or indirectly contracting with Israeli companies and individuals, or buying, selling, or acquiring in any way products produced in Israel. This prohibition is by all accounts widely adhered to in Lebanon. Ministry of Economy officials have reaffirmed the importance of the boycott in preventing Israeli economic penetration of Lebanese markets.

LIBYA: Prior to its 2011 revolution, Libya did not maintain diplomatic relations with Israel and had a law in place mandating adherence to the Arab League boycott. The Qadhafi regime enforced the boycott and routinely inserted boycott-related language in contracts with foreign companies and maintained other restrictions on trade with Israel. Ongoing political upheaval in Libya since 2011 has made it difficult to determine the current attitude of Libyan authorities toward boycott issues. The Administration will continue to monitor Libya's treatment of boycott-related issues.

MAURITANIA: Mauritania does not enforce any aspect of the boycott despite freezing diplomatic relations with Israel in March 2009 in response to Israeli military engagement in Gaza.

MOROCCO: Moroccan law contains no specific references to the Arab League boycott and the government does not enforce any aspect of it. In recent years, Morocco reportedly has been Israel's third largest trading partner in the Arab world, after Jordan and Egypt. U.S. firms have not reported boycott-related obstacles to doing business in Morocco. Moroccan officials do not appear to attend CBO meetings.

PALESTINIAN AUTHORITY: All foreign trade involving Palestinian producers and importers must be managed through Israeli authorities. The Palestinian Authority (PA) agreed not to enforce the boycott in a 1995 letter to the U.S. Government and the PA has adhered to this commitment. Various groups in different countries that advocate for Palestinian interests continue to call for boycotts and other actions aimed at restricting trade in goods produced in Israeli West Bank settlements.

SUDAN: The government of Sudan supports the Arab League boycott and has enacted legislation requiring adherence to it. However, there appear to be no regulations in place to enforce the secondary and tertiary aspects of the boycott.

SYRIA: Traditionally, Syria was diligent in implementing laws to enforce the Arab League boycott. The country maintained its own boycott-related blacklist of firms, separate from the CBO list. Syria's boycott practices have not had a substantive impact on U.S. businesses due to U.S. economic sanctions imposed on the country since 2004. The ongoing and serious political unrest within the country since 2011 has further reduced U.S. commercial interaction with Syria.

TUNISIA: Upon the establishment of limited diplomatic relations with Israel, Tunisia terminated its observance of the Arab League boycott. Since the 2011 Tunisian revolution, there has been no indication that Tunisian government policy has changed with respect to the boycott.

GULF COOPERATION COUNCIL (GCC): In September 1994, the GCC member countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) announced that they would no longer adhere to what they consider to be the secondary and tertiary aspects of the boycott, eliminating a significant trade barrier to U.S. firms. In December 1996, the GCC countries recognized the total dismantling of the boycott as a necessary step to advance peace and promote regional cooperation in the Middle East and North Africa. Despite this commitment to dismantle the boycott, commercial documentation containing boycott-related language continues to surface on occasion and to impact business transactions.

The situation in individual GCC member countries is as follows:

Bahrain: The U.S. Government has received assurances from the government of Bahrain that it has no restrictions on U.S. companies trading with Israel or doing business in Israel, regardless of their ownership or other relations with Israeli companies. Bahrain renounced enforcement of its boycott law in September 2005 while preparing to sign its Free Trade Agreement with the United States. Tender documents from Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have been remedied when brought to authorities' attention. The government has stated publicly that it recognizes the need to abandon formally the primary aspect of the boycott. There are no laws prohibiting bilateral trade and investment between Bahrain and Israel and Israeli-labeled products reportedly can occasionally be found in Bahraini markets.

Kuwait: Kuwait continues to recognize the 1994 GCC decision and no longer adheres to what they consider to be the secondary or tertiary aspects of the boycott. Kuwait claims to have eliminated all direct references to the boycott in procurement documentation as of 2000. Kuwait has a three-person boycott office, which is part of the General Administration for Customs. Although Kuwaiti officials reportedly regularly attend Arab League boycott meetings, it is unclear whether they are active participants.

Oman: The U.S. Government has received assurances from Oman that it does not apply the boycott. Although boycott-related language occasionally appears in tender documents, Omani officials have committed to ensuring that such language is not included in new tender documents and have removed boycott-related language when the language is brought to their attention. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation, although Omani firms typically avoid marketing consumer products that can be identified as originating from Israel. Omani diplomatic missions are prohibited from taking part in Arab League boycott meetings.

Qatar: Qatar has a boycott law but the extent to which the government enforces it is unclear. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries continue to report receiving boycott-related requests from public Qatari companies; in those instances, companies have made an effort to substitute alternative language. An Israeli trade office opened in Qatar in May 1996, but Qatar ordered the closure of that office in January 2009 in protest against the Israeli military action in Gaza. Despite this closure, Qatar continues to allow trade with Israel and allows Israelis to visit the country. Qatar permits the entry of Israeli business travelers who obtain a visa in advance. The chief executive of Qatar's successful 2022 World Cup bid has indicated that Israeli citizens would be welcome to attend the World Cup.

Saudi Arabia: Saudi Arabia, in recognition of the 1994 GCC decision, renounced enforcement of the secondary and tertiary boycott. Senior Saudi government officials from relevant ministries have requested that U.S. officials keep them informed of any allegations that Saudi entities are seeking to enforce these aspects of the boycott. Saudi entities have expressed a willingness to substitute non-boycott-related language in commercial documents. In 2018, Saudi Arabia permitted Air India to establish a direct flight from New Delhi to Tel Aviv that flies through Saudi airspace.

The United Arab Emirates (UAE): The UAE continues to recognize the 1994 GCC decision although U.S. firms and their subsidiaries continue to report receiving boycott-related requests from UAE entities. The UAE has not renounced the primary aspect of the boycott, but the degree to which it is enforced is unclear. Nevertheless, boycott-related requests continue to emanate from Emirati entities; in 2018, U.S. persons submitted 85 prohibited requests to the Department of Commerce, up from 65 in 2017. The United States has had some success in working with the UAE to resolve specific boycott-related cases. The U.S. Department of Commerce/OAC and Emirati Ministry of Economy officials have held periodic meetings aimed at encouraging the removal of boycott-related terms and conditions from commercial documents. The Emirati government has taken a number of steps to eliminate prohibited boycott requests, including the issuance of a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy.

Non-Arab League Countries

In recent years, press reports have occasionally surfaced regarding the implementation of officially sanctioned boycotts of trade with Israel by governments of non-Arab League countries, particularly some member states of the 57 member Organization of the Islamic Conference (OIC), headquartered in Saudi Arabia. (Arab League and OIC membership overlaps to a degree, though the OIC membership is geographically and culturally much more diverse.) Information gathered by U.S. Embassies in various non-Arab League OIC member states does not paint a clear picture of whether the OIC enforces its own boycott of Israel (as opposed to lending support to Arab League positions). The degree to which non-Arab League OIC member states enforce any aspect of a boycott against Israel also appears to vary widely. Bangladesh, for example, does impose a primary boycott on trade with Israel. By contrast, OIC members Kazakhstan, Tajikistan, and Turkmenistan impose no boycotts on trade with Israel and in some cases have actively encouraged such trade. Turkey has an active history of trade with Israel.

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was $5.1 billion in 2018, a 5.3 percent increase ($253 million) over 2017. U.S. goods exports to Argentina were $9.9 billion, up 3.5 percent ($334 million) from the previous year. Corresponding U.S. imports from Argentina were $4.9 billion, up 1.7 percent. Argentina was the United States' 29th largest goods export market in 2018.

U.S. exports of services to Argentina were an estimated $9.0 billion in 2017 (latest data available) and U.S. imports were $2.9 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $8.8 billion in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Argentina (stock) was $14.9 billion in 2017 (latest data available), a 6.0 percent increase from 2016. U.S. direct investment in Argentina is led by manufacturing, information services, and finance/insurance.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Argentina’s Most Favored Nation (MFN) applied tariff rate averaged 10.3 percent for agricultural products and 14.3 percent for non-agricultural products in 2017 (latest data available). Argentina’s simple average World Trade Organization (WTO) bound tariff rate is significantly higher at 32.4 percent for agricultural products and 31.7 percent for non-agricultural products. Argentina’s maximum bound tariff rate for all products is 35 percent.

Argentina is a founding member of the Southern Common Market (MERCOSUR) customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. Venezuela has been suspended from MERCOSUR since December 2016. MERCOSUR’s Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent.

Under a July 16, 2015 MERCOSUR Common Market Council (CMC) decision, each MERCOSUR member is permitted to maintain a limited number of exceptions to the CET for an established period. Argentina is permitted to maintain a list of 100 exceptions to the CET until December 31, 2021. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the official website.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country’s customs authorities. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. The MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and a December 2010 plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect. Argentina ratified the CCC in November 2012.

MERCOSUR member countries are also allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. Argentina imposes a 14 percent tariff on imports of capital goods that are also produced domestically. Imports of certain other capital goods that are not produced domestically are subject to a reduced *ad valorem* tariff of two percent. A list of the goods affected and their respective tariff rates can be found here.

Argentina has bilateral agreements with Brazil and Uruguay on automobiles and automotive parts intended to provide preferential treatment among the three countries. Argentina extended the bilateral agreement with Brazil through June 30, 2020, pursuant to a July 12, 2018 resolution. That resolution also increases the number of automotive parts not produced locally that can enter the country, subject to a two percent import tariff. Mexico and Argentina also have a separate bilateral trade agreement regarding quotas for automobiles and automotive parts. In March 2019, they reached agreement to retain quotas for three final years before implementing bilateral free trade in these goods.

Decree 117/2017, issued on February 17, 2017, eliminated the 35 percent duty on imports of a number of electronic devices effective April 1, 2017. The list of products at zero percent duty can be found in Annex I and II.

Taxes

In August 2012, the Argentine Tax Authority (AFIP) issued Resolution 3373, which raised the rate of certain taxes charged after import duties are levied, thereby increasing the tax burden for importers. The resolution also established a six percent income tax withholding rate on imports of all goods, except goods intended for consumption or for use by the importer. For those goods, an 11 percent income tax rate applies. Resolution 3373 also established an advance value-added tax (VAT) rate of 20 percent for imports of consumer goods and 10 percent for imports of capital goods. The advance VAT regime was most recently modified by General Resolution 4319, which reduces or eliminates the advance VAT for some products. A list of products exempt from the advance VAT is available in Annex 1 of the resolution. The advance VAT is paid by the importer, unless the goods are for personal use. If the products are sold in Argentina, the normal VAT rate, which is 21 percent for most consumer and capital goods, is levied after subtracting any advance VAT previously paid.

Argentina has a tax-exempt trading area called the Special Customs Area (SCA), located in Tierra del Fuego province. The SCA was established in 1972, through Law 19,640, to promote economic activity in the southern province. The SCA program, which is set to expire at the end of 2023, provides benefits for established companies that meet specific production, exportation, and employment objectives. Goods produced in Tierra del Fuego and shipped through the SCA to other parts of Argentina are exempt from some local taxes and benefit from reductions in other taxes. On June 5, 2018, through Resolution 47/2018, Argentina added products made from materials originating in the province and components fabricated in the rest of Argentina to the program for use in the peat and *lenga* wood industry and the aquaculture sector. Additionally, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. As of July 2017, sales of liquefied petroleum gas and natural gas produced in Tierra del Fuego and destined for consumption or industrial activities within the SCA are exempt from VAT. Argentina does not apply a VAT on information technology and electronics products, such as mobile phones, cameras, and tablets, produced in the SCA.

In 2009, Argentina increased the VAT from zero percent or 10.5 percent to 21 percent on a list of information technology and electronics products not produced in the SCA, such as mobile and satellite phones, digital video and photography cameras, GPS equipment, DVD players, computer monitors, refrigerators and freezers, heaters, televisions, and microwave ovens. The full list is available here.

On November 29, 2017, Argentina issued Decree 979, which eliminated certain internal taxes (not including VAT) on electronic products such as cell phones, air conditioning devices, televisions, and microwaves, produced in Tierra del Fuego. The Decree also established a gradual reduction plan for internal taxes on electronic goods produced outside Tierra del Fuego, with the intention of reaching a zero percent tax by 2024.

On July 5, 2016, the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolutions 123 and 313, which allow companies to obtain tax benefits on purchases of solar or wind energy equipment for use in investment projects that incorporate at least 60 percent local content in their electromechanical installations. In cases where local supply is insufficient to reach the 60 percent threshold, the threshold can be reduced to 30 percent. The resolutions also provide tax exemptions for imports of capital and intermediate goods that are not locally produced for use in the investment projects. On September 28, 2017, the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolution 1-E/2017 updating the list of goods that are not locally produced. The list can be found in Annex I and II.

On August 1, 2016, Argentina passed Law 27263, implemented by Resolution 599-E/2016, which provides tax credits to automotive manufacturers for the purchase of locally-produced automotive parts and accessories incorporated into specific types of vehicles. The tax credits range from 4 percent to 15 percent of the value of the purchased parts. The list of vehicle types included in the regime can be found here. On April 20, 2018, Argentina issued Resolution 28/2018, simplifying the procedure for obtaining the tax credits. The resolution also establishes that if the national content drops below the minimum required by the resolution because of relative price changes due to exchange rate fluctuations, automotive manufacturers will not be considered non-compliant with the regime. However, the resolution sets forth that tax benefits will be suspended for the quarter when the drop was registered.

Nontariff Barriers

Import Licensing

Argentina subjects imports to automatic or non-automatic licenses that are managed through the Comprehensive Import Monitoring System (SIMI) established in December 2015 by the National Tax Agency (AFIP) through Resolutions 5/2015 and 3823/2015. On July 7, 2017, the government issued Resolutions E-292 and E-523, which reorganized the regulation of the automatic and non-automatic import licensing system.

The SIMI system requires importers to submit detailed information electronically about goods to be imported into Argentina. Once the information is submitted, relevant Argentine government agencies review the application through a "Single Window System for Foreign Trade" (Ventanilla Unica de Comercio Exterior). The automatic import licensing requirements apply to approximately 87 percent of Argentina's tariff schedule. The list of products subject to non-automatic licensing has been modified several times since the beginning of the SIMI system, resulting in a net decrease in the number of tariff lines subject to non-automatic licensing. As of December 2018, Argentina maintained non-automatic import license requirements on 10,571 12-digit tariff lines, including on products the government deems import-sensitive, such as automobiles, paper and cardboard, iron and steel, nuclear reactors, electrical and construction materials and parts, toys, textiles and apparel, and footwear. The Secretary of Trade modified the non-automatic licensing list on August 31, 2018, through Resolution 507, and on September 3, 2018, through Resolution 526.

Customs Barriers and Trade Facilitation

Argentina has ratified the WTO Trade Facilitation Agreement.

Customs valuation

Argentina continues to apply reference values to several thousand products. Under this system, authorities establish benchmark unit prices (*i.e*., reference prices) for goods that originate in, or are imported from, specified countries, for customs valuation purposes. Importers of affected goods must pay duties based on the reference value. If a good is imported and the invoice price is lower than the reference price, Argentina requires importers to obtain an authenticated invoice. The Argentine government publishes a list of reference prices and covered countries.

Certificates of Origin

Certificates of origin have been a key element in Argentine import procedures to enforce trade remedy measures, reference prices, and certain geographical restrictions. Argentina requires certificates of origin for certain categories of products, including certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (*e.g.*, wool, cotton, other vegetable), carpets, most textiles (*e.g.*, knitted, crocheted), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the MFN tariff rate, a U.S. product's certificate of origin must be authenticated by an Argentine embassy or consulate, or carry a U.S. Chamber of Commerce seal. For products with many internal components, such as machinery, each individual part is often required to be notarized in its country of origin, which can be very burdensome. Importers have stated that the rules governing these procedures are unclear and appear to be enforced arbitrarily. Information on how to obtain a certificate of origin can be found here. On October 18, 2018, through Resolution 60/2018, the Ministry of Production and Labor eliminated the requirement for a certificate of origin for goods subject to antidumping or safeguard measures, instead requiring a certification (a sworn declaration of non-preferential origin) that can be submitted online. The resolution also simplifies the process required to obtain a certificate of origin for most categories of products, with the exception of textiles and footwear.

Express Delivery and Electronic Commerce

As of August 26, 2016, pursuant to Resolutions 3915 and 3916, Argentina allows the import of goods via mail or through an express delivery service provider. Non-commercial mail shipments with a value of $200 or less and a weight not greater than two kilograms may be delivered door-to-door. Books, printed material, and documents may be delivered door-to-door without the need to complete an international postal shipment declaration. Buyers have to pay a 50 percent tax on all but the first order up to $25. Non-commercial courier shipments with a value of $1,000 or less and a weight not greater than 50 kilograms are exempt from import licensing and other import requirements, subject to certain conditions, including an annual limit of five shipments per person. As of June 2, 2018, through General Resolution 4259, commercial and non-commercial courier shipments up to $3,000 are able to avoid the use of a broker for the customs declaration. Previously, shipments with a value higher than $1,000 required an import declaration through a customs broker. Any shipments over $3,000 require the use of a customs broker.

Pursuant to Resolutions 4049-E/2017, 4133-E/2017, and 725-E, all merchandise with a value up to $15,000 and a weight up to 300 kilograms can be exported via the program "Exporta Simple" through postal service providers. However, the total value of goods that an exporter may export through the program in a given year may not exceed $600,000.

Argentina does not have a centralized platform for, and does not allow the use of, electronically produced air waybills, which would accelerate customs processing and the growth of electronic commerce transactions.

Ports of Entry

Argentina restricts entry points for several classes of goods, including sensitive goods classified in 20 Harmonized Tariff Schedule chapters (*e.g.*, textiles; shoes; electrical machinery; iron, steel, metal, and other manufactured goods; and watches), through specialized customs procedures for these goods. A full list of ports of entry can be found in Annex J.

Import Bans

Argentina prohibits the import of many used capital goods. Under the Argentina-Brazil Bilateral Automobile Pact, Argentina bans the import of used self-propelled agricultural machinery unless it is imported to be rebuilt in-country. Argentina also prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and used automotive parts. Argentina generally restricts or prohibits the importation of any remanufactured good, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. In the case of remanufactured medical goods, imports are further restricted by the requirement that the importer of record must be the end user, such as a hospital, doctor, or clinic. These parties are generally not accustomed to importing and are not typically registered as importers.

Pursuant to Decree 509/2007, Annex 6, Argentina maintains an import prohibition on used clothing.

Import Restrictions

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, as follows:

- Used capital goods can only be imported directly by the end user.
- Overseas reconditioning of the goods is allowed only if performed by the original manufacturer. Third-party technical appraisals are not permitted.
- Local reconditioning of the good is subject to technical appraisal to be performed only by the state-run Institute of Industrial Technology (INTI), except for aircraft-related items.
- Regardless of where the reconditioning takes place, the Argentine Customs Authority requires the presentation of a "Certificate of Import of Used Capital Goods" at the time of importation. This certificate is issued by the Secretariat of Foreign Trade following approval by the Secretariat of Industry. Pursuant to Joint Resolutions 12/2014 and 4/2014 of January 2014, the import certificate for used capital goods has a duration of 60 working days from the issue date.
- The imported used capital good cannot be transferred (sold or donated) for a period of four years.

Pursuant to Decree 2646/2012, used capital goods imports are subject to a 28 percent tax if local production of the good exists, a 14 percent tax in the absence of existing local production, and a 6 percent tax if the used capital good is for the aircraft industry. There are exceptions for used capital goods employed in certain industries (*e.g.*, printing, textiles, mining, and in some cases, aviation), which permit imports of the goods at a zero percent import tax.

On November 15, 2016, the government issued Decree No. 1174/2016, which reduces by 25 percent the import tariffs on used capital goods that are needed as part of investment projects. Complementary used capital and intermediate industrial goods – not more than 20 years old and for use in domestic production lines – are also eligible for the 25 percent import tariff reduction.

Resolution 909/1994 places restrictions on the importation of certain used goods for consumption, such as parts and components that are not used in the manufacture of other products. Decree 1205, issued November 29, 2016, modified the list of restricted items and established import tariffs ranging from 6 percent to 28 percent for some of these items. The list includes electronic and recording equipment; railroad vehicles and other railroad parts; optic, photography and filming equipment; tractors; buses; aircraft; and ships. The full list of restricted items can be found here.

Consumer Goods Price Control Program

In January 2014, the Argentine government launched a consumer goods price control program called "Precios Cuidados." Under the voluntary program, participating consumer goods manufacturers and supermarkets agreed to adhere to price caps on nearly 200 basic consumer goods. Since January 2016, the program has been extended several times with prices adjusted for inflation and additional products added to the program. On January 8, 2019, the government extended the program through May 6, 2019, for 566 products, 60 percent of which are food and beverages. On September 28, 2018, the Secretary of Domestic Trade issued Disposition 46/2018, including small retail stores in the program. The full list of goods can be found here.

In February 2016, the Argentine government issued Resolution 12/2016, which established the "Precios Claros" program to monitor retail prices using an "Electronic System of Advertised Prices" (SEPA), accessible online or via mobile app. Supermarkets are required to publish their price lists and have enough stock of the products listed under the program. Consumers can report the absence of products or any difference in price via the SEPA app, through the website, or by presenting a complaint directly to the National Commission for the Defense of Competition (CNDC) Office. The CNDC has the authority to apply a fine to companies if it finds an absence of justification for increases in prices of products listed under the program.

Competition

In October 2014, Argentina launched the "Ahora 12" program, which allows individuals to finance the purchase of certain domestically-manufactured goods, ranging from clothing to home appliances, as well as domestic tourism, in 12 monthly installments with certain credit cards without interest. On December 1, 2016, the government launched the "Ahora 18" program, which allows individuals to finance the purchase of the same types of domestically manufactured goods and domestic tourism in 18 monthly, interest-free installments. On April 1, 2017, the government launched the "Ahora 3 y 6" program, which allows individuals to finance the purchase of clothing, footwear, certain leather goods, toys, and board games in three or six monthly, interest-free installments. On December 28, 2018, the government extended all three programs through April 30, 2019, and added LED lamps to the list of eligible products. The list of goods qualifying for each of the programs can be found here.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity Assessment and Safety Certificate Requirements

Since 2013, Argentina has maintained conformity assessment requirements that obligate foreign manufacturers and importers to obtain safety certifications from Argentine certification bodies for all imported electrical and electronic products before they can enter commerce in Argentina. These testing requirements are applicable only to foreign manufacturers, can be duplicative, impose significant delays, and increase costs. Additionally, pursuant to Resolution 508/2015 (issued in October 2015 and modified in July 2016 by Resolution 171/2016), importers of low voltage electrical equipment are required to obtain safety certificates for their imports from the Argentine Gas Institute.

On December 30, 2016, the Ministry of Production issued Dispositions E 578/2016 to E 586/2016, authorizing the acceptance of international certification results for some electronic products, alleviating the testing requirements for these products. Resolutions E 207/2017 and 390/2017, issued in March and May 2017, respectively, specified exceptions to certification requirements for certain products and introduced an administrative procedure for importers to certify via online affidavit that their imports of equipment for professional use meet Argentina's domestic safety standards. In March 27, 2018, the Ministry of Production issued Resolution 168/2018, which eliminates the requirement to label imports of some electronic products and reduces the amount of time for importers to certify their products.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

In 2018, Argentina restored full market access for U.S. beef, beef products, and offals. Argentina had banned the importation of U.S. beef and beef products for more than a decade due to concerns with bovine spongiform encephalopathy (BSE).

Pork

In 2018, U.S. pork and pork products (except offals) received full market access in Argentina. Argentina had banned U.S. pork and pork products for over two decades, due to sanitary concerns that the United States considered non-science based.

Poultry

Argentina does not allow imports of fresh, frozen, and chilled poultry from the United States due to concerns over Highly Pathogenic Avian Influenza (HPAI), and because Argentina does not recognize the U.S. sanitary inspection system as equivalent to the Argentine system. Over the past several years, the United States has provided Argentina a comprehensive presentation on the status of HPAI in the United States and on the success of the U.S. Government's mitigation and eradication programs. In addition, the United States requested that Argentina regionalize its restrictions related to HPAI in the event of future outbreaks, as recommended by the World Organization for Animal Health. During bilateral discussions in 2018, the United States again engaged with Argentina to resolve the market access issues for poultry, and proposed a sanitary certificate and related production requirements to ensure food safety. The United States will continue to engage with Argentina to resolve barriers to trade.

SUBSIDIES

Export Subsidies

Argentina provides full or partial VAT refunds to exporters of consumer goods, agricultural goods, industrial goods, and processed foods. In December 2016, through Decree 1341, Argentina established an additional 0.5 percent VAT refund to exporters of products that are certified with geographic or origin indications; are certified as organic; or that meet quality and innovation standards that qualify the good to be labelled "Argentine Food a Natural Choice." These certifications and labels are granted by the Secretariat of Agroindustry, which maintains a list of qualifying agricultural products. In May 2017, through Resolution 90-E, the Ministry of Agroindustry amended the scheme to prevent exporters from claiming multiple additional 0.5 percent VAT refunds when a product meets more than one of the criteria listed above. Argentina last updated the list of goods eligible for the refund scheme and their associated refund percentages on August 17, 2018, through Decree 767/2018.

GOVERNMENT PROCUREMENT

Argentine law establishes a national preference for local industry for most government procurement if the domestic supplier's tender is no more than five percent to seven percent higher than the foreign tender. The amount by which the domestic bid may exceed a foreign bid depends on the size of the domestic company making the bid. On May 10, 2018, Argentina issued Law 27,437, giving additional priority to Argentine small and medium-sized enterprises and, separately, requiring that foreign companies that win a tender must subcontract domestic companies to cover 20 percent of the value of the work. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the sub-national (provincial) level. On September 5, 2018, the government issued Decree 800/2018, which provides the regulatory framework for Law 27,437. On November 16, 2016, the government passed a public-private partnership (PPP) law (No. 27,328) that regulates public-private contracts. The law lowered regulatory barriers to foreign investment in public infrastructure projects with the aim of attracting more foreign direct investment. However, the law contains a "Buy Argentina" clause that mandates at least 33 percent local content for every public project.

Argentina is not a signatory to the WTO Agreement on Government Procurement (GPA), but it became an observer to the WTO Committee on Government Procurement in February 1997.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina remained on the Priority Watch List in the 2018 Special 301 Report. The situation for innovators in the pharmaceutical and agrochemical sectors presents significant challenges. First, the scope of patentable subject matter is significantly restricted under Argentine law. Second, there is not adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the government in conjunction with its lengthy marketing approval process. Finally, the patent pendency backlog continues to be excessive.

In addition, the absence of sustained enforcement efforts – including under the criminal laws – sufficient to have a deterrent effect, coupled with judicial inefficiency and outdated intellectual property (IP) laws, diminishes the competitiveness of U.S. IP-intensive industries in Argentina. During 2018, Argentina made progress in tackling the problem of street vendors selling counterfeit products within the City of Buenos Aires. Authorities continue to take action, including seizures of illicit goods, to dismantle organized crime operations in "La Salada", one of South America's largest black markets for counterfeit and pirated goods. The existing legislative regime and lack of enforcement hinder the ability of rights holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal online markets.

The United States will continue to engage Argentina on these and other IP issues.

SERVICES BARRIERS

Audiovisual Services

The Argentine government imposes restrictions on the showing, printing, and dubbing of foreign films in Argentina. Argentina also charges *ad valorem* customs duties on U.S. film exports based on the estimated value of the potential royalty generated from the film in Argentina rather than on the value of the physical materials being imported.

The National Institute of Cinema and Audiovisual Arts taxes foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and geographical locations of theaters at which the films will be screened within Argentina. Films screened in 15 or fewer movie theaters are exempted.

The Media Law, enacted in 2009 and amended in 2015, requires companies to produce advertising and publicity materials locally or to include 60 percent local content. The Media Law also establishes a 70 percent local production content requirement for companies with radio licenses. Additionally, the Media Law requires that 50 percent of the news and 30 percent of the music that is broadcast on the radio be of Argentine origin. In the case of private television operators, at least 60 percent of broadcast content must be of Argentine origin. Of that 60 percent, 30 percent must be local news, and 10 percent to 30 percent must be local independent content.

Insurance Services

The Argentine insurance regulator (SSN) imposes restrictions on reinsurance supplied by foreign companies. Resolution 40422-E/2017 allows local insurance companies to place only up to 75 percent of the ceded premium with foreign reinsurance companies.

SSN requires that all investments and cash equivalents held by locally registered insurance companies be located in Argentina.

Telecommunications Services

Under the Media Law and the Telecommunications Law, Argentina maintains regulations that treat terrestrial-based providers (*e.g.*, cable providers) differently from satellite-based providers (*e.g.*, direct-to-home satellite providers) in that only satellite-based providers are prohibited from bundling their services with other Internet and telecommunications services offered by terrestrial-based providers. Decree 1340/2016 has an exception allowing satellite television suppliers that already held licenses for information technology services to continue providing such services. However, the inconsistencies in the current legal framework create uncertainty in the market.

INVESTMENT BARRIERS

Pension System

In 2008, the Argentine Parliament approved a bill to nationalize Argentina’s private pension system and transfer pension assets to the government social security agency. Compensation to investors in the privatized pension system, including to U.S. investors, is still pending and subject to ongoing international arbitration.

Local Content Requirements

Argentina maintains certain localization measures aimed at encouraging domestic production. Resolutions 123 and 313, issued in July 2016, allow companies to obtain tax benefits on purchases of solar or wind energy equipment for use in investment projects that incorporate at least 60 percent local content in their electromechanical installations. In cases in which local supply is insufficient to reach the 60 percent threshold, the threshold can be reduced to 30 percent. The resolutions also provide tax exemptions for imports of capital and intermediate goods that are not locally produced for use in investment projects. The updated list of tax-exempt goods under the renewable energy regime and the technical criteria used to calculate the local content is detailed in annex 1 of Joint Resolution 1/2017.

Argentina establishes percentages of local content in the production process for manufacturers of mobile and cellular radio communication equipment operating in Tierra del Fuego province. Resolution 66, issued July 12, 2018, replaces Resolution 1219/2015 and maintains the local content requirement for products such as technical manuals, packaging, and labelling. Resolution 66 eliminated the local content requirement imposed by Resolution 1219 for batteries, screws, and chargers. The percentage of local content required ranges from 10 percent to 100 percent depending on the process or item. In cases where local supply is insufficient to meet local content requirements, companies may apply for an exemption that is subject to review every six months. A detailed description of local content percentage requirements can be found here.

OTHER BARRIERS

Export Policies

Argentina maintains export taxes on a range of products: Soybeans are taxed at 18 percent; soy flour and oil at 18 percent; soy pellets and other refined mixed soy oils at 27 percent; bovine leather at 10 percent; wool not carded or combed at 5 percent; paper and cardboard waste for recycling at 20 percent; and alloy steel waste at 5 percent. Annex I of Decree 1126/2017 details the full list of export duties applied in Argentina. On May 28, 2018, the government issued Decree 486 increasing the export tax on biodiesel from 8 percent to 15 percent as of July 1, 2018. On September 3, 2018, the government established a new export tax on all goods through December 31, 2020. Through Decree 793, as of September 4, 2018, Argentina requires an additional export duty based on the following calculation: the lower amount of a 12 percent fee over the total export value, or an additional three to four pesos per dollar exported, depending on the merchandize value added. On September 28, 2018, the Secretary of Trade amended Decree 793 with Decree 865, excepting goods included in the program “Exporta Simple” from the new export tax. General Resolution 4318, issued on October 11, 2018, details the formula applied by customs authorities to calculate the export tax.

In January 2017, Argentina issued Decree 1343/2016, which established a plan for a 0.5 percent per month reduction in the export duty on soybeans starting January 1, 2018. Decree 793 accelerated this export duty reduction program for soybeans, taking it to 18 percent, a number that would have been reached by the end of 2019 under the export duty reduction regime.

Goods produced in and exported from the Special Customs Area (SCA) located in Tierra del Fuego province are exempt from export taxes.

The MERCOSUR Common Customs Code, which as noted above is not yet in effect, would restrict future export taxes and transition to a common export tax policy.

The Government of Argentina issued decree 1201 on January 2, 2019, establishing an export tax of 12 percent on services rendered in Argentina whose use or effective exploitation takes place abroad. The decree provided the tax would end December 31, 2020. To account for fluctuations in the exchange rate, the export tax may not exceed four pesos per dollar exported. Micro and small enterprises exporting less than $600,000 in services per year are exempted from the tax, and those exporting more than $600,000 are required to pay the export tax on exports above the $600,000 threshold.

Export Ban

On July 2, 2016, pursuant to Decree 823/2016, Argentina implemented a 360-day ban on all exports of scrap of iron, steel, copper, and aluminum. The government extended the ban for 360 days on October 27, 2017, through Decree 848/2017, and again on October 30, 2018, through Decree 970. According to Decree 160/2015, issued on December 18, 2015, iron and steel scrap are subject to a 5 percent export tax, but this tax is not being collected due to the current export ban on these products.

Export Registrations and Permits

Since December 29, 2015, Argentina has required exporters of grains, oilseeds, and their derivatives to obtain Affidavits of Foreign Sales ("DJVE" or Declaraciones Juradas de Ventas al Exterior) and register the exportation with the Office of Coordination and Evaluation of Subsidies to Domestic Consumption. Approved DJVEs are valid for 180 days, except DJVEs for wheat, which are valid for 45 days. In the case of soybeans and other soy products, exporters are required to pay 90 percent of the export tax at the time of the DJVE approval. On September 26, 2016, the Ministry of Agroindustry, together with the Ministry of Production and the Ministry of Treasury and Public Finances, issued Joint Resolution 1-E, extending the DJVE requirement for the 2016-2017 agricultural year. The government has not issued a subsequent resolution, but the DJVE requirement remains in effect.

Prior to March 30, 2016, an export permit was required for the exportation of dairy products. However, the permit requirement was replaced by a requirement to obtain DJVEs to export the same products.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $15.2 billion in 2018, a 4.8 percent increase ($699 million) over 2017. U.S. goods exports to Australia were $25.3 billion, up 3.2 percent ($780 million) from the previous year. Corresponding U.S. imports from Australia were $10.1 billion, up 0.8 percent. Australia was the United States' 16th largest goods export market in 2018.

U.S. exports of services to Australia were an estimated $22.1 billion in 2017 (latest data available) and U.S. imports were $7.7 billion. Sales of services in Australia by majority U.S.-owned affiliates were $43.3 billion in 2016 (latest data available), while sales of services in the United States by majority Australia-owned firms were $14.8 billion.

U.S. foreign direct investment (FDI) in Australia (stock) was $168.9 billion in 2017 (latest data available), a 1.5 percent increase from 2016. U.S. direct investment in Australia is led by nonbank holding companies, manufacturing, and mining.

TRADE AGREEMENTS

The United States-Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. The United States and Australia meet regularly to review implementation.

Australia also has free trade agreements in force with Chile, China, Japan, Korea, Malaysia, New Zealand, Singapore, and Thailand, as well as the Association of Southeast Asian Nations (ASEAN) as a group. In addition, in 2018, Australia signed the Peru-Australia Free Trade Agreement and became the fourth country to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. In March 2019, Australia signed the Indonesia-Australia Comprehensive Economic Partnership Agreement. It is also a participant in the Regional Comprehensive Economic Partnership trade negotiations and the Pacific Agreement on Closer Economic Relations (PACER Plus) among Pacific island nations. Australia is negotiating free trade agreements with the European Union, the Gulf Cooperation Council, Hong Kong, and the Pacific Alliance.

IMPORT POLICIES

Taxes

Low Value Goods Taxes

In 2017, an amendment was made to the A New Tax System (Goods and Services Tax) Act 1999 to apply a 10 percent goods and services tax (GST) to low value goods. The legislation, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, placed the onus of GST collection and remittance on the overseas vendor. The amendment on low value goods charges GST on imported goods valued at A$1,000 or less (approximately $787), sold to consumers in Australia as of July 1, 2018. Vendors with annual sales to Australian customers in excess of A$75,000 (approximately $59,000) and to non-profits in excess of A$150,000 (approximately $118,000) are subject to registration requirements and charging GST on sales of low value imports. The United States is continuing to monitor the implementation of the amendment.

SANITARY AND PHYTOSANITARY BARRIERS

Animal Health

Beef and Beef Products

Australia requires completion of a complex approval process before it will permit the importation of bovine products from a country that has reported any indigenous cases of bovine spongiform encephalopathy (BSE). Under Australia's requirements, Food Standards Australia New Zealand (FSANZ) conducts an individual country risk analysis. In 2017, FSANZ issued its final report for the United States, which determined that U.S. beef imports are safe for human consumption, and recommended Category 1 status be afforded to U.S. beef under Australia's import requirements. The findings also confirmed that U.S. beef meets the negligible BSE risk requirements of the World Organization for Animal Health (OIE). Following Australia's report, U.S. and Australian officials completed negotiation of the final requirements for heat-treated, shelf-stable U.S. beef products and opened Australia's market to these products in May 2018, after a 14-year ban.

For fresh (chilled or frozen) beef and beef products, the Australian government, in December 2015, began the review of its import requirements for three countries that applied for export to Australia: the United States, Japan, and the Netherlands. This review, which concluded in August 2017, considered fresh (chilled or frozen) beef and beef products such as: meat, bone, and offal of cattle; buffalo; and bison. In 2019, the Australian government intends to conduct an audit of the U.S. food safety system. The United States continues to engage the Australian government to reach an agreement on the terms and conditions for U.S. fresh beef and beef product exports to Australia.

Pork

Pork and pork products are the top U.S. agricultural export to Australia, valued at $227 million in 2018. However, due to concerns about porcine reproductive and respiratory syndrome (PRRS) and post- weaning multisystemic wasting syndrome (PMWS), imports of fresh/chilled pork and bone-in products are not permitted. The United States has requested that Australia remove all PRRS- and PMWS-related restrictions and has provided scientific evidence to document the safety of U.S. pork products. Although the OIE approved an international standard for PRRS in May 2017, Australia has requested additional scientific information from the United States. In December 2017, the USDA Animal and Plant Health Inspection Service (APHIS) sent a scientific review paper on PRRS to the Australian government with a request that Australia re-open the import risk assessment for U.S. origin fresh/chilled/frozen pork. Access to the Australian market for fresh/chilled pork, bone-in pork, and pork products continues to be a high priority for the United States.

Poultry

Australia prohibits imports of uncooked poultry meat from all countries except New Zealand. While cooked poultry meat products may be imported, current import conditions (as set out in an import risk analysis) require that imported poultry meat products be cooked to a minimum core temperature of 74°C for 165 minutes or the equivalent. This temperature requirement, however, does not permit importation of cooked poultry product that would be suitable for sale in restaurants or delicatessens.

In 2012, Australia initiated an evaluation of whether it would grant access for U.S. cooked turkey meat to the Australian market under amended import conditions. The Australian government has been conducting an import risk analysis to assess this issue. In August 2016, the Australian Department of Agriculture and Water Resources released the draft review of cooked turkey meat from the United States for comment.

Following a public consultation period, which ended in November 2016, the Australian Department of Agriculture and Water Resources sought further information from the United States on the prevalence of infectious bursal disease virus (IBDV) in U.S. turkeys. Australia is also reviewing the time and temperature requirements for cooked turkey.

A study is underway to evaluate the prevalence of IBDV in U.S. commercial turkey flocks. A letter outlining the suggested approach to the prevalence study was sent to Australia in January 2018. The United States has identified this issue as a high priority, and will continue to work with Australia to gain meaningful commercial market access for cooked turkey meat.

Plant Health

Apples and Pears

Australia prohibits the importation of apples from the United States based on concerns regarding several pests. In October 2009, Australia published a pest risk analysis for apples from the United States and identified three additional fungal pathogens of concern to Australian regulatory authorities. In December 2014, the United States provided information to Australia to support the U.S. systems approach to address pest risk issues. The Australian government requested additional information. Australia has agreed to provide information on its process for completing the import risk analysis for U.S. apples and, in November 2018, announced it was commencing a new risk analysis for fresh apples from the Pacific Northwest states. A draft for public consultation may be released in the first half of 2019.

Australia also prohibits the importation of pears from the United States for phytosanitary issues, including fire blight.

GOVERNMENT PROCUREMENT

Under the FTA, the Australian government opened its market for covered government procurement to U.S. suppliers, eliminating preferences for domestic suppliers and committing to use fair and transparent procurement procedures.

Australia was accepted as a new party to the WTO's Agreement on Government Procurement (GPA) in October 2018. Australia has 12 months from the October 2018 meeting to deposit its instrument of acceptance and formally join the GPA.

Certain Australian federal and state government procurement rules introduced in 2017 that appear to favor local suppliers have caused some international concerns. Recently revised federal government procurement rules require agencies to consider the "national economic benefit" of all contracts awarded over a value of A$4 million (approximately $3.1 million). While little guidance has been given on how "national economic benefit" should be interpreted, some foreign companies have expressed concern about the consistency of this requirement with Australia's trade obligations. The state of Queensland also introduced a "Buy Queensland" procurement policy in 2017. In the media statement for the policy, the Queensland Government stated that it "would no longer be constrained or bound by free trade agreements that have seen jobs go off-shore or interstate." The United States will continue to engage Australia to ensure that FTA covered procurements are conducted consistent with that agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Australia generally provides strong intellectual property rights protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting. Under the

FTA, Australia must provide that a pharmaceutical product patent owner be notified of a request for marketing approval by a third party for a product claimed by that patent and provide measures in its marketing approval process to prevent persons other than the patent owner from marketing a patented product during the patent term. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process. The U.S. Government also has raised concerns about provisions in Australian law that impose a potential significant, unjustifiable, and discriminatory burden on the enjoyment of patent rights, specifically on the owners of pharmaceutical patents.

SERVICES BARRIERS

Audiovisual Services

The Australian Content Standard of 2005 requires commercial television broadcasters to produce and screen Australian content. Broadcasting content requirements include an Australian content quota of 55 percent for transmissions between 6:00 a.m. and midnight in addition to minimum annual sub-quotas for Australian drama, documentary, and children's programs. A broadcaster must also ensure that Australian-produced advertisements occupy at least 80 percent of the total advertising time screened between the hours of 6:00 a.m. and midnight in a year. These local content requirements do not apply to cable or online programming.

Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent of their programming budgets on new Australian drama programs. This local content requirement applies to cable and satellite services but does not apply to new digital multi-channels or to online programming.

The Australian commercial radio industry Code of Practice sets quotas for the broadcast of Australian music on commercial radio, which include a requirement that Australian performers account for at least 25 percent of all music broadcast between 6:00 a.m. and midnight. In July 2010, the Australian Communications and Media Authority introduced a temporary exemption from the Australian music quota for digital-only commercial radio stations (*i.e.*, stations not also simulcast in analog). The exemption was renewed in 2014 and remains in effect.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

The FTA recognizes the importance of avoiding barriers to trade conducted electronically and commits Parties not to impose tariffs or otherwise discriminate against digital products distributed electronically (*e.g.*, books, films, and music).

As noted above, quotas and mandatory expenditure requirements aimed at promoting Australian audiovisual production do not apply to online platforms in Australia. However, the government of Australia sought stakeholder views on whether to extend mandatory content funding mechanisms, which are currently applicable to traditional distribution platforms, to online digital platforms. Several Australian stakeholders advocated for extending discriminatory preferences to online suppliers, which could adversely affect numerous U.S. suppliers. Some U.S. stakeholders question the need for such an extension, given the growth and ready availability of Australian content (to which online suppliers have contributed). The United States will be monitoring any resulting recommendations carefully to ensure consistency with FTA provisions in this sector.

INVESTMENT BARRIERS

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and Australia's Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of

Australia’s Treasury, screens potential foreign investments in Australia above a threshold value that stands at A$266 million (approximately $187 million) as of January 1, 2019. Based on advice from the FIRB, the Treasurer of Australia may deny or place conditions on the approval of particular investments above the threshold on national interest grounds.

Under the FTA, all U.S. greenfield investments are exempt from FIRB screening. In addition, under the FTA, non-greenfield U.S. investments are only screened above a (higher) threshold value, which stands at A$1.154 billion (approximately $812 million) as of January 1, 2019. The FIRB has generally approved U.S. investments. All foreign persons, including U.S. investors, must notify the Australian government and get prior approval to make investments of five percent or more in enterprises in the media sector, regardless of the value of the investment.

In early 2018, the Treasurer announced a new requirement that a foreign buyer of agricultural land must demonstrate to the FIRB that the land was first “marketed widely” in the Australian market.

A number of instances of Australia’s state or territorial governments cancelling existing foreign investment projects has prompted some concern about increased risks facing foreign investors in Australia.

BAHRAIN

TRADE SUMMARY

The U.S. trade balance with Bahrain shifted from a goods trade deficit of $98 million in 2017 to a goods trade surplus of $1.0 billion in 2018. U.S. goods exports to Bahrain were $2.0 billion, up 126.7 percent ($1.1 billion) from the previous year. Corresponding U.S. imports from Bahrain were $991 million, down 0.5 percent. Bahrain was the United States' 64th largest goods export market in 2018.

U.S. exports of services to Bahrain were an estimated $344 million in 2017 (latest data available) and U.S. imports were $1.0 billion. Sales of services in Bahrain by majority U.S.-owned affiliates were $270 million in 2016 (latest data available), while sales of services in the United States by majority Bahrain-owned firms were $1.4 billion.

U.S. foreign direct investment (FDI) in Bahrain (stock) was $423 million in 2017 (latest data available), a 10.4 percent increase from 2016.

FREE TRADE AGREEMENTS

The United States-Bahrain Free Trade Agreement

Under the United States-Bahrain Free Trade Agreement (FTA), Bahrain provides duty-free access to all industrial and consumer products. The United States-Bahrain Bilateral Investment Treaty, which took effect in May 2001, covers investment issues between the two countries.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent) and tobacco products. However, as of 2018 not all GCC Member States have implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax. Bahrain began to levy the taxes on December 30, 2017.

Taxes

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State. Bahrain began applying the VAT in January 2019.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Degradable Plastics

In September 2018, Bahrain notified to the WTO a new technical regulation for degradable plastic products. The United States has raised concerns related to the scope of products covered and the timeline for implementation. The United States also has raised concerns about the environmental impact of some of the degradable plastics. Bahrain has limited its implementation to the first phase of the regulation, covering plastic shopping bags, and has stated it plans to notify future changes in products coverage of this regulation to the WTO.

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC “G” mark in an effort to “unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers.” U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex Alimentarius Commission (Codex), the International Plant Protection Convention, or the World Organization for Animal Health (OIE). As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

The FTA requires covered entities in Bahrain to conduct procurements covered by the agreement in a fair, transparent, and nondiscriminatory manner. Some U.S. companies report that they have faced prolonged and detrimental issues with the tendering process related to GCC-funded projects.

Bahrain is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its FTA obligations, Bahrain enacted several laws to improve protection and enforcement for copyrights, trademarks and patents. However, Bahrain has yet to accede to the International Convention for the Protection of New Varieties of Plants (1991), a requirement under the FTA.

Bahrain's record on intellectual property rights (IPR) protection and enforcement continues to be mixed. Over the past several years, Bahrain has launched several campaigns to block illegal signals and prohibit the sale of decoding devices in order to combat piracy of cable and satellite television and has launched several public awareness campaigns regarding copyright piracy. However, many counterfeit consumer goods continue to be sold openly.

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

OTHER BARRIERS

As a result of a 2015 ban on network marketing schemes, direct selling and multi-level marketing organizations are not allowed to operate in Bahrain.

BANGLADESH

TRADE SUMMARY

The U.S. goods trade deficit with Bangladesh was $4.0 billion in 2018, a 5.2 percent decrease ($219 million) over 2017. U.S. goods exports to Bangladesh were $2.1 billion, up 43.1 percent ($636 million) from the previous year. Corresponding U.S. imports from Bangladesh were $6.1 billion, up 7.3 percent. Bangladesh was the United States' 62nd largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Bangladesh (stock) was $460 million in 2017 (latest data available), a 0.4 percent increase from 2016.

TRADE AGREEMENTS

Bangladesh has negotiated several regional trade and economic agreements, including the South Asian Free Trade Area (SAFTA), the Asia-Pacific Trade Agreement (APTA), the Bay of Bengal Initiative for Multi-Sectoral, Technical and Economic Cooperation (BIMSTEC), and the South Asian Association for Regional Cooperation (SAARC) Preferential Trading Arrangement (SAPTA). Nevertheless, South Asia remains the least integrated region in the world. Less than three percent of Bangladesh's exports go to neighboring India and less than one percent in total goes to other South Asian countries. The United States is Bangladesh's single largest market.

Bangladesh has not signed any bilateral free trade agreement (FTA), but has started initial FTA discussions with a number of countries, including Brazil, China, Sri Lanka, Thailand, and Turkey. India, Malaysia, and Pakistan, among others, have expressed interest in negotiating an FTA, but Bangladesh has decided not to pursue these offers.

IMPORT POLICIES

Bangladesh's import policies are outlined in the Import Policy Order 2015-18 issued by the Ministry of Commerce. The Import Policy Order has two lists, "List of Controlled Goods" and "List of Prohibited Goods."

Tariffs and Taxes

Tariffs

The Import Policy Order is the primary legislative tool governing customs tariffs. The collected tariffs are a significant source of government revenue, which generally complicates efforts to lower tariff rates.

Bangladesh levies tariffs based on the Harmonized Commodity Description and Coding System and publishes the applied rates. Generators, information technology equipment, raw cotton, textile machinery, certain types of machinery used in irrigation and agriculture, animal feed for the poultry industry, certain drugs and medical equipment, and raw materials imported for use in specific industries are generally exempt from tariffs. Samples in reasonable quantities can be carried by passengers during travel and are not subject to tariffs; however, samples are subject to tariffs if sent by courier.

Bangladesh's applied Most Favored Nation (MFN) tariff rate averaged 13.9 percent, with average applied rates of 16.9 percent for agricultural products and 13.4 percent for non-agriculture products in 2018. According to the 2018-19 Bangladesh Customs Tariff Schedule, the maximum MFN applied rate is 25 percent. Products subject to rates from 5 percent to 25 percent include general input items, basic raw materials, and intermediate and finished goods. Bangladesh provides concessions for imports of capital machinery and equipment, as well as for specified inputs and parts.

Taxes

Other charges applicable to imports are an advance income tax of five percent; a value-added tax (VAT) of zero percent to 15 percent, with exemptions for input materials; and a supplementary duty of zero percent to 35 percent, which applies to certain new vehicles or luxury items such as cigarettes, alcohol, and perfume. VAT and supplementary duty are also charged on certain domestically produced goods.

Bangladesh has abolished excise duties on all locally produced goods and services with certain exceptions. For example, services rendered by banks or financial institutions are subject to a tax on each savings, current, loan, or other account with balances above defined levels, and certain taxes apply to airline tickets. Excise duties remain on similar imported goods and services.

Nontariff Barriers

All importers, exporters, and brokers must be members of a recognized chamber of commerce as well as members of a Bangladeshi organization representing their trade.

All imports, except for capital machinery and raw materials for industrial use, must be supported by a letter of credit (LoC). A LoC authorization form and a cash bond, ranging from 10 percent to 100 percent of the value of the imported good, are also required. Other documents required for importation include the following: a bill of lading or airway bill, commercial invoice or packing list, and certificate of origin. For certain imported goods or services, additional certifications or import permits related to health, security or other matters are required by the relevant government agencies. Goods imported by or for the public sector generally require less documentation but the specific amount of documentation required varies from sector to sector.

Bangladesh imposes registration requirements on commercial importers and private industrial consumers. Commercial importers are defined as those who import goods for sale without further processing. Private industrial consumers are units registered with one of four sponsoring agencies: the Bangladesh Export Processing Zones Authority, for industries located in the Export Processing Zones (EPZs); the Bangladesh Small and Cottage Industries Corporation, for small and medium-sized enterprises; the Handloom Board, for handloom industries run by the weaver associations engaged in the preservation of classical Bangladesh weaving techniques; and the Bangladesh Investment Development Authority (BIDA), for all other private industries.

Commercial importers and private industrial consumers (with the exception of those located in EPZs) must register with the Chief Controller of Imports and Exports in the Ministry of Commerce. The Chief Controller issues import registration certificates (IRC). An IRC is generally issued within 10 days of receipt of the application. Commercial importers are free to import any quantity of non-restricted items. For industrial consumers, the IRC specifies the maximum value (the import entitlement) for each product that the industrial consumer may import each year, including items on the restricted list for imports. The import entitlement is intended as a means to monitor imports of raw materials and machinery, most of which enter Bangladesh at concessional duty rates.

Registration Certificate

Registered commercial and industrial importers are classified into six categories based on the maximum value of annual imports. An importer must apply in writing to the relevant Import Control Authority (ICA) for registration in any of the six categories, and provide necessary documents, including an original copy of the "Chalan" (the Treasury payment form) as evidence of payment of the required registration fees. The ICA makes an endorsement under seal and signature on the IRC for each importer, indicating the maximum value of annual imports and the renewal fee. Initial registration fees and annual renewal fees vary depending on the category. An importer may not open a LoC in excess of the maximum value of annual imports.

Indentors (who are representatives of foreign companies or products compensated on a commission or royalty basis) and exporters must also pay registration and renewal fees.

Foreign exchange is controlled by the Bangladesh Bank, the country's central bank authority, in accordance with Foreign Exchange Control policies.

Customs Barriers

Despite the obligation under the WTO Customs Valuation Agreement, Bangladesh has not notified its national legislation or Checklist of Issues to the WTO Committee on Customs Valuation. The U.S. Government will continue to emphasize the importance of submitting both overdue notifications, which are integral to the successful implementation of the WTO Customs Valuation Agreement.

Medical Devices

U.S. firms exporting medical devices to Bangladesh face registration challenges with recent implementation of the Drug Control Act of 1940, most notably the treatment of medical devices as pharmaceuticals. Also, Bangladesh is currently registering medical devices on a product-by-product basis. These policies unnecessarily complicate marketing approval procedures leading to delays for medical devices. Additionally, industry has expressed concern regarding prospective price controls for medical devices.

SANITARY AND PHYTOSANITARY BARRIERS

Fumigation of U.S. Origin Cotton

Bangladesh requires fumigation of imported U.S. cotton at the port of entry, allegedly to protect locally grown cotton from possible boll weevil infestation. U.S. cotton exporters and Bangladeshi cotton importers assert that this requirement is unnecessary because of mitigation measures taken prior to export to eliminate any presence of the pest in larval or adult form. These measures include ginning, cleaning, and bale compression. This fumigation is also unnecessary because the United States has eradicated boll weevil from all cotton-producing areas of the United States, with the exception of a small region in southern Texas. This requirement adds three to four cents in cost per bale, and delays access to the importers for a period of no less than 72 hours while the cotton is being held for fumigation, which hinders increased demand for U.S. cotton. Technical experts from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), along with their Bangladeshi counterparts, visited the Chittagong port in September 2018 to inspect imported U.S. cotton and demonstrated there was no presence of boll weevil. The U.S. Government continues to press the government of Bangladesh to eliminate the unnecessary fumigation requirement for U.S. cotton.

SUBSIDIES

The government of Bangladesh provides export cash incentives to selected export sectors. The sectors and the respective rates are updated every year through circulars issued by Bangladesh Bank. Such cash incentives are provided only to those exporters who do not avail themselves of the bonded warehousing facility or the duty drawback facility.

In the agricultural sector, subsidies are mainly given to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized fertilizers, diesel, and electricity. The subsidized fertilizer is distributed through a controlled channel, which keeps prices reasonably stable.

GOVERNMENT PROCUREMENT

Government procurement is primarily undertaken through public tenders under the Public Procurement Act of 2006 and conducted by the Central Procurement Technical Unit (CPTU). There are no "buy national" policies. The government of Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are very common. Bangladesh recently launched a national electronic Government Procurement portal, but U.S. companies have raised concerns about the use of outdated technical specifications, the structuring of specifications to favor preferred bidders, and a lack of overall transparency in public tenders. Several U.S. companies have claimed that their foreign competitors often use their local partners to influence the procurement process and to block awards to otherwise competitive U.S. company bids.

Bangladesh is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bangladesh continues to make slow progress towards establishing a comprehensive legal framework to adequately and effectively protect and enforce IPR. The government enacted the Copyright Law in July 2000 (amended in 2005), the Trademarks Act in 2009, and the Geographical Indication of Goods (Registration and Protection) Act in 2013. The Department of Patents, Designs and Trademarks (DPDT) drafted a new Patent Act in 2014, which remains under review by the Ministry of Industries. The Patents and Designs Act, 1911, is still the applicable law in Bangladesh. Additionally, the DPDT has drafted an "Innovation & IP Policy Strategy." Bangladesh reportedly failed to consult all relevant stakeholders and the policy lacks wide acceptance or support.

The government of Bangladesh devotes limited resources to IPR protection and enforcement. Counterfeit and pirated goods are readily available. A number of U.S. firms, including pharmaceutical companies, manufacturers of consumer goods, and software firms have reported violations of their IPR. Investors note police are willing to investigate counterfeit goods distributors when informed but are unlikely to initiate independent investigations. In addition, right holders have raised concerns about fairness of court decisions in IP cases. In a positive development, the government of Bangladesh recently issued for public comment draft Customs Rules that are intended to streamline IP enforcement.

Better coordination among enforcement authorities and government institutions, such as the DPDT and Customs, is needed to strengthen Bangladesh's IPR regime. The U.S. Patent and Trademark Office and other U.S. Government agencies continue to provide technical assistance to the Bangladesh government to improve the country's IPR regime.

SERVICES BARRIERS

Bangladesh does not allow foreign companies to provide services in sectors that are reserved for government investment. In other sectors, foreign companies must obtain permission from relevant ministries or authorities before providing services. New market entrants face significant restrictions in most regulated commercial fields, including telecommunications, banking, and insurance, and the process for establishing legal entities is subject to strict regulatory requirements. There have been reports that licenses are not always awarded in a transparent manner. Transfer of control of a business from local to foreign shareholders requires prior approval from the Bangladesh Bank.

Telecommunications Services

The Bangladesh Telecommunication Regulatory Commission (BTRC) limits foreign equity in the telecommunications sector to a maximum of 60 percent, and foreign investors are required to have a local partner. Foreign investors must invest in foreign currency and may not use loans from Bangladeshi financial institutions. According to the National Telecommunication Policy, foreign investors in the telecommunications sector are encouraged to demonstrate their commitment to Bangladesh by forming joint ventures with local companies. Frequent changes to regulations and tax policy in the sector increase business uncertainty, thereby decreasing the incentive to invest.

Bangladesh imposes the highest taxes on mobile telecommunications services of any country in South Asia. Under the present tax regime, the mobile industry is taxed like a supplier of luxury goods, with a series of taxes imposed at various levels of operation. Mobile network operators pay 5.5 percent of their revenue to the BTRC as a spectrum fee, one percent of their revenue into a social obligation fund, and BDT 50 million ($600,000) as an annual licensing fee. A tax of approximately $1.25 is imposed on the sale of subscriber identification model (SIM) cards, and a three percent supplementary duty is applied to charges for phone usage. Handsets are subject to a 15 percent import duty. The corporate income tax rate for telecommunications companies listed in the Bangladeshi capital markets is 40 percent, while the corporate income tax rate for mobile service providers that are not publicly listed in the Bangladesh capital market is 45 percent.

In January 2018, the Telecommunications and Information and Communications Technology Minister approved new mobile network tower sharing guidelines. The approved guidelines raised foreign companies' shareholding limit in a tower sharing company from the previous limit of 49 percent to 70 percent. The guidelines allow four companies to manage mobile towers in Bangladesh. In November 2018, BTRC issued licenses through a non-transparent process to four firms to operate tower sharing companies.

Insurance Services

Section 22 of the Insurance Act of 2010 allows foreign investors to buy or hold shares in an insurance company, and permits exclusively foreign-owned companies to supply insurance without local or state-owned enterprise equity participation. However, U.S. companies have reported that permission to open branch offices can be politically influenced and that the government of Bangladesh is not permitting new exclusively foreign-owned companies into the insurance market.

Currently, foreign insurance firms can hold up to a 60 percent stake in an insurance company in Bangladesh. To attract more multinational insurers into the market, the government has outlined plans that would increase the percentage stake foreign firms are permitted to hold.

U.S. companies have also raised concerns that the Bangladesh Bank is not permitting the marketing and signing of life insurance products via commercial banks. The Bangladesh Bank has raised concerns about potential financial exposure, but U.S. companies assess there is no risk for commercial banks because the U.S. companies take on all the risk for their products. The United States continues to press the Bangladesh Bank to reconsider its restriction on marketing life insurance products via commercial banks.

Financial Services

In December 2012, Bangladesh began phasing in a National Payment Switch Bangladesh (NPSB), owned by Bangladesh Bank, for processing electronic transactions through various channels, including ATMs, point of sale (POS), mobile devices, and the Internet. The main objectives of the NPSB are to create a common electronic platform for payments throughout Bangladesh, facilitate the expansion of debit and credit card-based payments, and promote electronic commerce. In practice, the NPSB has limited the ability of global suppliers of electronic payment services to participate in the market.

Initially, only ATM transactions were routed through the NPSB. However, Bangladesh intends to expand the system. In September 2018, the Bangladesh Bank ordered banks to connect their POS terminals with the National Payment Switch by December 2019. The Bangladesh Bank's position as both regulator and market participant creates a formidable barrier for competitors to the NPSB.

Security of NPSB transactions is another issue raised by market participants. The NPSB can only process magnetic strip data and cannot yet process the data stored on secure chips, nor can it provide the level of security and fraud detection of private service suppliers. The United States has urged Bangladesh Bank to review its policies on the NPSB and hold discussions with all stakeholders to address their concerns.

Audiovisual Services

According to the Bangladesh Telecommunication Act of 2001, the government must approve licenses for foreign-originating channels. Foreign television distributors are required to pay a 25 percent supplementary duty on revenue from licensed channels.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

In October 2018, the controversial Digital Security Act was passed into law, which criminalizes a wide range of online activity, creating challenges for Internet-based platforms and digital media firms that depend on user-generated content. The Act criminalizes online activities such as publishing information that tarnishes the image of the state, spreads rumors, or hurts religious sentiment. The Act provides for criminal penalties up to $120,000 and up to 14 years in prison for certain infractions.

The Information and Communication Technology Act authorizes the government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under the Information and Communication Technology Act, the Government of Bangladesh may also prohibit the transmission of any data or voice call, and censor online communications. On several occasions in 2018, the BTRC ordered mobile operators to limit data transmissions for political reasons, and on November 19, 2018 instructed all international Internet gateway licensees to temporarily block a U.S. Voice over IP (VoIP) service supplier; the blockage lasted for one day. Such interference, even on a temporary basis, undermines the value of Internet-based services, decreasing the incentive to invest and raising costs for firms in the market.

The Bangladesh Road Transport Authority's (BRTA) Ride-Sharing Service Guidelines came into force in March 2018. These new regulations included requirements that app-based transportation service providers maintain data servers within Bangladesh. The guidelines also require that vehicles be registered for at least one year before providing ride-sharing services, and that drivers may only drive for one app-based service.

BRTA has not enforced all requirements of the Guidelines, but the threat of possible enforcement raises uncertainty for businesses providing app-based transportation services.

INVESTMENT BARRIERS

Bangladesh frequently promotes local industries and some discriminatory policies and regulations exist. In practical terms, foreign investors frequently find it necessary to have a local partner even though this requirement may not be statutorily defined. In 2017, the government also rejected foreign investment projects that raised geopolitical concerns, especially in sensitive sectors like energy.

Bureaucratic inefficiencies often discourage investment in Bangladesh. According to World Bank figures, Bangladesh's foreign direct investment as a percentage of GDP in 2017 (latest data available) was only 0.9 percent. Overlapping administrative procedures and a lack of transparency in regulatory and administrative systems can frustrate investors seeking to undertake projects in the country. Frequent transfers of top- and mid-level officials in various Bangladeshi ministries, directorates, and departments are disruptive and prevent timely implementation of both strategic reform initiatives and routine duties.

Repatriation of profits and external payments are allowed, but U.S. and other international investors have raised concerns that outbound transfers from Bangladesh remain cumbersome and that applications to repatriate profits or dividends can be held for additional information gathering or otherwise delayed.

U.S. and other international companies have raised concerns that the National Board of Revenue (NBR) has arbitrarily reopened sometimes decades-old tax cases, with particular targeting of cases involving multinational companies. In October 2018, the NBR decided to set up a separate unit, the International Taxpayers' Unit, to handle income tax files of foreign companies operating in Bangladesh. The new unit will also closely scrutinize the issues related to tax avoidance and capital flight. U.S. firms are concerned they will be targeted, as the government seeks to increase revenues.

In 2016, the Bangladesh Investment Development Authority (BIDA) was formed by merging the Board of Investment and the Privatization Commission. BIDA's goal is to push for implementation of the One-Stop Service Act and to become Bangladesh's one-stop private investment promotion and facilitation agency. Bureaucratic inefficiencies often discourage investment in Bangladesh. Overlapping administrative procedures and a lack of transparency in regulatory and administrative systems can frustrate investors seeking to undertake projects in the country. The formation of BIDA is aimed at resolving such situations.

ANTICOMPETITIVE PRACTICES

The government of Bangladesh formed the Bangladesh Competition Commission (BCC), an independent agency, under the Ministry of Commerce, in 2011. Under the 2012 Competition Act, all proposed mergers are subject to the approval of the BCC, which considers the market situation and the impact of a planned merger on the consumers. Along with the BCC, the WTO Cell of the Ministry of Commerce still handles many competition-related issues.

Despite creation of the BCC and significant reforms in the domestic economy, Bangladesh still possesses a weak competition regime to address anticompetitive conduct. Although the BCC finally came into operation in 2016, it has experienced operational delays due to a lack of staff and resources.

Sectors such as railways, telecommunications, and other public utility services have generated monopolies leading to anti-competitive structures. In the cellular phone sector, competition has been restricted to only a few firms, such as Grameenphone, Robi, and BanglaLink. The Bangladeshi railway system remains a state-owned monopoly requiring large subsidies because of poor management and lack of fare enforcement.

In some sectors, syndicate leaders fix prices and control the supply chain to maximize their profits. For example, fertilizer is rarely available in the open market at the government fixed price because sellers collude to sell it at a higher price. Examples of exclusive dealings include doctors prescribing drugs from a certain pharmaceutical company, schools advising educational supplies be bought only from a particular outlet, and organizations requiring service fees be deposited at certain banks.

There have been many instances of alleged bid rigging in government tenders in Bangladesh, a few of which involved U.S. companies. U.S. companies complain about non-transparency in the bidding process and about losing contracts on which they believed they had demonstrated far superior experience, technical expertise, and higher value than the companies chosen.

OTHER BARRIERS

Corruption

According to major ranking institutions, Bangladesh is among the most corrupt countries in the world. Bribery and extortion in business are some of the features of this reality. U.S. companies have complained about long delays in obtaining approval of licenses and bids, as compared to other players. While the government has established legislation to combat bribery, embezzlement, and other forms of corruption, enforcement is inconsistent. There have been continuous efforts to water down public procurement rules and proposals to curb the independence of the Anti-Corruption Commission (ACC), the main institutional anti-corruption watchdog. A 2013 amendment to the ACC Law removed the ACC's authority to sue public servants without prior government permission. While the ACC has increased pursuit of cases against lower-level government officials and some higher-level officials, there remains a large backlog of cases. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive bribery, bribery of foreign public officials, money laundering, and using public resources or confidential state information for private gain. However, anti-corruption legislation is inadequately enforced. Facilitation payments and gifts are illegal, but common in practice.

Export Policies

In the fiscal year 2017-18, the government of Bangladesh imposed export duties on 19 product categories, including: rice bran, tobacco, cigarettes, liquefied petroleum gas cylinders (capacity below 5,000 liters), cotton waste, and ceramic bricks.

BOLIVIA

TRADE SUMMARY

The U.S. goods trade surplus with Bolivia was $93 million in 2018, a 233.2 percent increase ($65 million) over 2017. U.S. goods exports to Bolivia were $578 million, down 2.8 percent ($17 million) from the previous year. Corresponding U.S. imports from Bolivia were $485 million, down 14.4 percent. Bolivia was the United States' 95th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Bolivia (stock) was $598 million in 2017 (latest data available), a 8.3 percent increase from 2016.

IMPORT POLICIES

Bolivia's constitution, adopted in February 2009, establishes broad guidelines to give priority to local production. However, to date, the only legislation enacted with respect to this prioritization is Law 144 (the "Productive Revolution Law"), approved on June 26, 2011. The Productive Revolution Law supports communal groups and unions of small producers in an effort to bolster domestic food production. It allows the production, importation, and commercialization of genetically modified products, though it requires labeling. As of January 2018, all genetically modified products must include a yellow, triangular shaped label. The "Mother Earth Law" (*Ley de Madre Tierra*), enacted on October 15, 2012, calls for the phased elimination of all genetically modified products from the Bolivian marketplace. However, implementing regulations have not yet been issued, due in part to objections from Bolivian industry.

Tariffs

Bolivia's Most Favored Nation (MFN) applied tariff averaged 11.8 percent in 2017 (latest data available). Bolivia's MFN applied tariff rate averaged 13.1 percent for agricultural products and 11.6 percent for non-agricultural products. Bolivia's maximum WTO bound tariff rate, as well as its simple average WTO bound tariff rate, is 40 percent for both agricultural and non-agricultural products.

Bolivia's MFN tariff structure consists of seven rates ranging from zero percent to 40 percent. The rates in principle apply according to the category of the product: zero percent for capital goods (machinery and equipment) and certain meat and grain products; 5 percent for other capital goods and inputs; 15 percent for fruit, vegetables, fish, and raw materials for manufacturing plastics; 20 percent for other manufactures and value-added products; 30 percent for cigarettes, wooden doors, and windows; and 40 percent for clothing and accessories, alcoholic beverages, wooden furniture, and footwear. Bolivian legislation allows the government to raise tariffs if necessary to protect domestic industry, or, alternatively, to lower tariffs if supplies run short.

Nontariff Barriers

Import Bans

Bolivian law authorizes prohibitions on the import of goods on the basis that the goods may affect human and animal life or health, or are harmful to the protection of plants, morality, the environment, the security of the state, or the nation's financial system. In 2018, prohibitions applied to 33 tariff lines. Prohibited items included: radioactive residues; halogenated derivatives of hydrocarbons; arms, ammunition, and explosives; worn clothing; and some types of vehicles and motor vehicles – in particular, vehicles using liquefied gas and used motor vehicles over one year old, motor vehicles over three years old for the transport of more than ten persons, and special-purpose motor vehicles over five years old.

Import Restrictions

Other products require prior authorization before they can be imported. In 2018, prior authorization was required for 719 ten-digit tariff lines. Prior authorization (such as the import prohibitions discussed above) is generally presented as a way to protect human and animal health or life, to protect plants and conserve exhaustible natural resources, or to protect the security of the state. Bolivian law also permits the use of prior authorization to protect domestic industry from import competition. Prior authorizations may be automatic or non-automatic. Examples of products requiring prior authorization include: mineral products; chemical products; plastics and rubber; pulp and paper; textiles; footwear and headgear; precious stones; machinery and appliances; precision equipment; arms and ammunition; and some miscellaneous manufactures.

Customs Barriers and Trade Facilitation

Bolivia has ratified the WTO Trade Facilitation Agreement (TFA), and in accordance with TFA Section II has provided its indicative dates for Categories B and C. However, Bolivia has not notified its definitive Category B dates, which were due to the WTO Secretariat by February 22, 2018. Additionally, Bolivia notified three of the four Section I transparency provisions as Category A, but has yet to notify the relevant information to the Secretariat.

SANITARY AND PHYTOSANITARY BARRIERS

The National Agricultural Health and Food Safety Service (SENASAG) is responsible for certifying the health safety status of products for domestic consumption, including imports, and for issuing sanitary and phytosanitary import permits. Importers have voiced concerns regarding SENASAG’s transparency, including the inconsistent application of agricultural health and food safety standards and regulations. While SENASAG approved imports of live cattle and bovine genetics in 2015, beef, poultry, pork and dairy products are not permitted entry. The United States will continue to engage with Bolivia in efforts to obtain market access for these products. Importers also have raised concerns regarding the inconsistent application of import regulations by Bolivia’s Agency for Medicines and Medical Technologies (AGEMED).

GOVERNMENT PROCUREMENT

In 2004, Bolivia enacted the “Compro Boliviano” (Buy Bolivian) program through Supreme Decree 27328. This program supports domestic production by giving preference margins to domestic producers or suppliers in government procurement. Under procurement rules that were modified in 2007 and 2009, the government must give priority to small and micro-producers and to campesino associations in procurements under $100,000. In addition, the government requires fewer guarantees and imposes fewer requirements on Bolivian suppliers that qualify as small or micro-producers or as campesino associations.

Bolivian companies also are given priority in government procurement valued between $142,000 and $5.7 million. Importers of foreign products can participate in these procurements only where locally manufactured products and local service providers are unavailable or where the Bolivian government does not initially select a domestic supplier. In such cases, or if a procurement exceeds $5.7 million, the government can call for an international tender. There is a requirement that foreign companies submitting a tender for government consultancy contracts do so in association with a Bolivian company, but the Bolivian government has been known to make exceptions in strategic sectors, as defined by the government.

For national and international tenders there are preference margins from 10 percent to 25 percent for Bolivian inputs.

As a general matter, the tendering process is nontransparent. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, none of the government-owned strategic sector companies, including the state-owned oil and gas company, Yacimientos Petrolíferos Fiscales Bolivianos, the state-owned electricity company, Empresa Nacional de Electricidad, and the state lithium company, Yacimientos de Litios Bolivianos, is required to publish tenders through the official procurement website, Sistema de Información de Contrataciones Estatales. Concerns have been raised that these state-owned companies are not required to follow the procedures established in the national procurement law. Direct procurement of goods and services by the Bolivian government has grown, and in 2016, direct procurement exceeded public invitations to tender, according to Bolivian government procurement statistics.

Bolivia is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bolivia was on the Watch List in the 2018 Special 301 report. The report noted that challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, significant concerns remain about trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. As stated in years past, the Special 301 report again encouraged Bolivia to improve its weak protection of IP.

INVESTMENT BARRIERS

Bolivia's constitution calls for a limit on foreign companies' access to international arbitration in cases of conflicts with the government. The constitution also states that all bilateral investment treaties (BITs) must be renegotiated to adjust to this and other new constitutional provisions. Citing these provisions, in June 2012, the Bolivian government became the first U.S. BIT partner to terminate its BIT with the United States. Existing investors in Bolivia at the time of termination continue to be protected by the U.S. BIT's provisions for 10 years after the termination of the treaty.

The Bolivian government emphasizes public ownership of strategic enterprises. In an effort to control key sectors of the economy, the government has obtained (through legally required contract renegotiations) majority ownership in a number of companies in the hydrocarbons, electricity, mining, and telecommunications sectors.

The Bolivian government also uses means other than nationalization to re-establish public sector control over the economy. In the past few years, the Bolivian government created dozens of public companies in "strategic" sectors such as food production, industrialization of natural resources, air travel, banking, and mining. Private sector entities have expressed concern that these public companies engage in subsidized, unfair competition leading to a state-driven economic system.

The Bolivian constitution includes requirements for state involvement in natural resource companies. The constitution states that all natural resources shall be administered by the government of Bolivia. The government grants ownership rights and controls the exploitation, exploration, and industrialization of natural resources through public companies, communities, and private companies in joint ventures with government entities and government-owned companies.

With respect to hydrocarbon resources, Article 359 of the 2009 constitution stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade-related products through the state-owned Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). Since 2006, YPFB has benefitted from nationalization laws that required operators to turn over all production to YPFB and sign new contracts that give the company control over the distribution of gasoline, diesel fuel, and liquefied petroleum gas. Since 2009, Article 359 has allowed YPFB to enter into joint venture contracts for limited periods of time with domestic or foreign entities wishing to exploit or trade hydrocarbons or their derivatives.

Outside the hydrocarbons sector, the Bolivian government changed the mining code in 2014, requiring all companies wishing to operate in the mining sector to enter into joint ventures with the state mining company, Corporación Minera de Bolivia. Bolivia's 2011 Telecommunications Law stipulates that foreign investment in broadcasting companies may not exceed 25 percent and that broadcasting licenses may not be granted to foreign persons. Priority is also given to Bolivian investment over foreign investment in financial activities.

Bolivian labor law limits foreign firms' ability to globally staff their companies by restricting foreign employees to 15 percent of the work force.

BRAZIL

TRADE SUMMARY

The U.S. goods trade surplus with Brazil was $8.3 billion in 2018, a 7.2 percent increase ($563 million) over 2017. U.S. goods exports to Brazil were $39.5 billion, up 6.1 percent ($2.3 billion) from the previous year. Corresponding U.S. imports from Brazil were $31.2 billion, up 5.8 percent. Brazil was the United States' 9th largest goods export market in 2018.

U.S. exports of services to Brazil were an estimated $26.4 billion in 2017 (latest data available) and U.S. imports were $7.2 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $39.1 billion in 2016 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $2.4 billion.

U.S. foreign direct investment (FDI) in Brazil (stock) was $68.3 billion in 2017 (latest data available), a 2.8 percent increase from 2016. U.S. direct investment in Brazil is led by manufacturing, finance/insurance, and mining.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Brazil’s Most Favored Nation (MFN) applied tariff rate averaged 10.2 percent for agricultural products and averaged 13.9 percent for non-agricultural products in 2017 (latest data available). Brazil’s simple average World Trade Organization (WTO) bound tariff rate is significantly higher at 35.4 percent for agricultural products and 30.8 percent for non-agricultural products. Brazil’s maximum bound tariff rate for non-agricultural products is 35 percent, while its maximum bound tariff rate for agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs, within the flexibilities of the Southern Common Market (MERCOSUR), to protect domestic industries from import competition and to manage prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

Brazil is a founding member of the MERCOSUR customs union, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. Venezuela has been suspended from MERCOSUR since December 2016. MERCOSUR’s Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent.

Brazil imposes relatively high tariffs on imports across a wide range of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel.

Under a July 16, 2015 MERCOSUR Common Market Council (CMC) decision, each MERCOSUR member is permitted to maintain a limited number of exceptions to the CET for an established period. Brazil is permitted to maintain a list of 100 exceptions to the CET until December 31, 2021. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the official website. Using these exceptions, Brazil maintains higher tariffs than its MERCOSUR partners on certain goods, including cellular phones, telecommunications equipment, computers and computer printers, wind turbines, certain chemicals and pharmaceuticals, cosmetics, joint cement, hydrogenated castor oil, white mineral oils, hydrogen carbonate, machining centers, speed changers, and certain instruments and models designed for demonstration purposes.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. The MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and a December 2010 plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but thus far, only Argentina has done so. On September 11, 2018, the Brazilian congress passed a legislative decree, which requires promulgation by Brazil's executive branch to complete the process for ratification of the CCC.

Wheat Tariff-Rate Quota

Brazil's WTO schedule provides for a 750,000 metric ton (MT) duty-free MFN tariff-rate quota (TRQ) for wheat imports. Brazil has not implemented this TRQ commitment, and in 1996, Brazil notified the WTO of its intent to withdraw the wheat TRQ in accordance with the negotiating process established in Article XXVIII of the GATT 1994. Brazil has applied the MERCOSUR CET of 10 percent on imported wheat from non-MERCOSUR trading partners, including the United States. As an outcome of the meeting between President Trump and President Bolsonaro on March 19, 2019, Brazil announced it will implement the TRQ.

Ethanol Tariff-Rate Quota

In September 2017, Brazil implemented an annual TRQ on ethanol imports, whereby imports above a 600 million liter quota are subject to a 20 percent tariff (in-quota imports continue to enter duty free). The annual TRQ will remain in place for two years. During this time, Brazil will analyze its impact and determine whether to extend it. While the 20 percent above quota tariff is below Brazil's WTO bound tariff rate of 35 percent, it nevertheless serves to limit ethanol imports from the United States. The United States has conveyed to Brazil its strong objection to this measure, which ended the mutually beneficial reciprocity of tariff-free trade of ethanol between the world's largest ethanol consumers and producers. The United States will continue to press Brazil to ensure that the measure is temporary in order to minimize disruptions to trade.

Taxes

Brazil applies federal and state taxes and charges to imports that can effectively double the actual cost of imported products in Brazil. The complexities of Brazil's domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges for all companies operating in and exporting to Brazil, including U.S. firms.

On November 8, 2018, a decree was issued for a new incentive program, known as Rota 2030, for the automotive sector. The law for the program was published on December 10, 2018, and establishes regulations granting manufacturers tax incentives if they improve energy efficiency and car safety. Automobile manufacturers in Brazil may also receive tax reductions if they invest in research and innovation projects in Brazil. Brazil will grant up to R$417 million in tax credits per year to the automobile industry in exchange for R$5 billion (approximately $1.39 billion) in research and development investment. The program does not apply to automobile importers. The benefits will be available under the law for a period of five years, but there are plans for the program to remain in place for 15 years. Brazil created Rota 2030 as a replacement for Inovarauto, a program a WTO dispute settlement panel found in 2017 to be inconsistent with Brazil's WTO obligations.

On August 31, 2015, Brazil issued Provisional Measure 690 to reform its excise tax regime for alcoholic beverages, which introduced a tax advantage for domestic producers of cachaça, a distinctive product produced from sugarcane. The Provisional Measure was signed into law on December 30, 2015 and imposes a 25 percent *ad valorem* Industrial Product Tax (IPI) on domestically-produced cachaça, while imposing a 30 percent *ad valorem* IPI on all other alcoholic beverages, including Tennessee Whiskey, bourbon, gin, and vodka, as well as beer and wine.

Nontariff Barriers

Import Bans

Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) products, as well as imports of certain blood products. However, Secretariat of Foreign Trade (SECEX) Ordinance 23/2011 establishes an exceptions list of more than 25 categories of used goods approved for import under certain specific circumstances. For example, certain antiques, cultural objects, inherited items, materials entering Brazil temporarily, and items with no commercial value may be approved for import. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically, or if they meet certain other limited exceptions.

Import Licensing

All importers in Brazil must register with SECEX to access SECEX's computerized documentation system (SISCOMEX). SISCOMEX registration is onerous, and includes a minimum capital requirement.

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as agricultural commodities and beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (Ministry of National Defense). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import licensing requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures creates additional burdens for U.S. exporters.

U.S. footwear and apparel companies have expressed concern about the extension of non-automatic import licenses and certificate of origin requirements for footwear, textiles, and apparel from non-MERCOSUR countries. They also note additional monitoring, enhanced inspection, and delayed release of certain goods, all of which negatively impact the ability to sell U.S.-made and U.S.-branded footwear, textiles, and apparel in the Brazilian market.

Brazil imposes non-automatic import licensing requirements on imported automobiles and automotive parts, including those originating in MERCOSUR countries. Delays in issuing the non-automatic import licenses negatively affect U.S. automobile and automotive parts manufacturers that export vehicles to Brazil.

Customs Barriers and Trade Facilitation

Brazil ratified the WTO Trade Facilitation Agreement in 2016 and continues to work towards fully optimal implementation of the Agreement. Brazil's notifications for the publication and transparency requirements remain incomplete, and U.S. companies continue to complain of burdensome and inconsistent documentation requirements for the import of certain types of goods, such as heavy equipment, that apply even if imports are on a temporary basis and will be used in other countries. Brazil has made strides in improving its trade facilitation environment by implementing ATA Carnet, to facilitate temporary admission of goods, and working toward a Mutual Recognition Agreement with the United States for its Authorized Economic Operator Program.

A 25 percent merchant marine tax on ocean freight plus port handling charges at Brazilian ports puts U.S. products at a competitive disadvantage *vis-à-vis* MERCOSUR products.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Telecommunications

Pursuant to Resolution 323 of November 2002, the Brazilian National Telecommunications Agency (ANATEL) requires testing of telecommunication products and equipment by designated testing facilities in Brazil. The Resolution only allows testing by a facility accredited by an independent accreditation body if no designated Brazilian labs are available, based on an order of priority established in Resolution 242/2000, or through a Mutual Recognition Agreement (MRA) with a foreign counterpart and accompanying Memoranda of Understanding (MOU) with accredited foreign laboratories. The only other exception is in cases where the equipment is too large or too costly to transport to the designated testing facilities. As a result, U.S. manufacturers and exporters must present virtually all of their information technology and telecommunication equipment for testing at laboratories located in Brazil before that equipment can be placed on the Brazilian market. This redundant testing increases costs for U.S. exporters and can delay the time to market for their products. At the end of November 2017, ANATEL issued a draft regulation for the Conformity Assessment and Approval of Telecommunications Equipment. If adopted, it would replace existing regulations that govern the conformity assessment process for telecommunications equipment in Brazil (*i.e.,* Resolutions 242/2000 and 323/2002). This regulation would give ANATEL the ability to more easily update technical procedures and seeks to create a post-market surveillance program, but there appear to be no substantive changes to conformity assessment requirements.

The United States has urged Brazil to implement the Inter-American Telecommunication Commission (CITEL) MRA with respect to the United States. Under the CITEL MRA, CITEL participants may agree to provide for the mutual recognition of conformity assessment bodies and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies to determine whether telecommunication equipment meets the importing country’s technical regulations. The United States and Brazil are both participants in CITEL. If Brazil implemented the CITEL MRA with respect to the United States, it would benefit U.S. suppliers seeking to sell telecommunication equipment in the Brazilian market by accepting product testing and certification conducted in the United States to meet Brazil’s technical requirements.

Conformity Assessment Procedures

Since July 2014, Brazil’s National Institute of Metrology, Quality, and Technology (INMETRO) has been developing new testing requirements (Ordinances 310/2014; 489/2014; 428/2015; and 597/2015) that are intended to improve conformity assessment procedures and consolidate all toy-related certification requirements into a single measure. In December 2016, INMETRO issued a final measure providing for testing and conformity assessment requirements for toys, Ordinance 563, which consolidates previous toys regulations. Under previous regulations, toy manufacturers were required to register manufacturing facilities; Ordinance 563 goes further and requires the registration of each toy as part of a family of products. In addition, it appears that product labels have to bear a separate registration number for each product family, which must be obtained through a new Object Registration (Registro de Objeto) system prior to importation. The application of the new Object Registration system to toys is expected to increase the complexity of the existing certification system, create delays in importing toys, and increase costs for importers and Brazilian consumers.

On October 25, 2018, INMETRO published draft Complementary Ordinance 503, which, if implemented, would adjust and clarify several of the technical quality regulations and conformity assessment requirements in Ordinance 563. However, Ordinance 503 failed to address several of U.S. industry's concerns with Ordinance 563, particularly those related to the complexity of the certification system, the lack of alignment with international standards in several areas, including age-grading, and a requirement to submit confidential business information. On December 26, 2018, INMETRO published Ordinance 598, which indefinitely delayed the implementation of Ordinance 563.

Conformity Assessment Procedures for Medical Devices

Under Ordinance 54/2016, INMETRO established a two-year validity period for product test reports (four years in the case of large equipment) and a five-year validity period for certifications, resulting in frequent product re-testing and re-certification. The ordinance also requires the application of a compliance identification mark prior to importation into Brazil.

Quality Requirements for Wine and Derivatives of Grape and Wine

In May 2016, Brazil notified to the WTO Committee on Technical Barriers to Trade (TBT) a draft technical regulation to set the official identity and quality standards for wine and derivatives of grape and wine products. The U.S. Government and industry submitted comments on the draft regulation in July 2016. Previous drafts of this measure were notified to the TBT Committee in 2010 and 2015. U.S. industry remains concerned that Brazil’s definitions of wine coolers and wine cocktails are overly trade restrictive and do not allow for the addition of colors, aromas, and flavors that are already permitted in spirits-based beverages. There are also concerns with the measure’s analytical parameters for laboratory analysis that do not correlate with the safety and quality of the product. The United States seeks to clarify the varieties of grapes that are allowed to make fine wine, the types of sugars that may be added to wine for sweetening, and pesticides that are permitted in the production process. The United States last raised concerns bilaterally with Brazil at the March 2018 TBT Committee meeting and submitted detailed written comments as part of Brazil’s 2017 WTO Trade Policy Review. The United States will continue to raise concerns and seek clarifications as Brazil works on this measure in 2019.

Other Technical Barriers to Trade

The Ministry of Health’s National Sanitary Regulatory Agency (ANVISA) must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. The registration process at ANVISA typically takes from three months to more than a year for new versions of previously registered products and more than six months for new products.

Sanitary and Phytosanitary Barriers

Pork

U.S. fresh, frozen, and further processed pork products are ineligible for import into Brazil. Brazil has indicated it will only authorize imports of U.S.-origin pork and pork products that have been tested and shown to be free of trichinae, or if mitigation measures are enforced in the production process. The United States does not consider these import requirements for trichinae to be scientifically justified. Further, the risk of transmission of trichinae posed by U.S. pork and pork products is very low because U.S. pork producers maintain stringent biosecurity protocols that have virtually eradicated the incidence of trichinae in U.S. commercial herds. The United States has raised this issue in various engagements with Brazil. In the Joint Statement following the meeting between President Trump and President Bolsonaro on March 19, 2019, the leaders announced agreement on science-based conditions to allow for the importation of U.S. pork to Brazil.

SUBSIDIES

The Plano Brasil Maior (Greater Brazil Plan) industrial policy, established by Law 12546 on December 14, 2011, offers a variety of tax, tariff, and financing incentives to encourage local firms to produce for export. For example, Brazil allows tax-free purchases of capital goods and inputs to domestic companies that export over 50 percent of their output. Similarly, the Reintegra program, launched in December 2011 as part of Plano Brasil Maior, exempted exports of goods covered by 8,630 tariff lines from certain taxes, and allowed Brazilian exporters to receive up to three percent of their gross receipts from exports in tax refunds. The Reintegra program expired at the end of 2013, but was reintroduced in July 2014 under Law 13043. The program was amended by Decree 8304 in September 2014 to add sugar, ethanol, and cellulose, among others, to the list of eligible products. The Reintegra program was amended again by Decree 8415 in February 2015 and Decree 8543 in October 2015, establishing that throughout most of 2015, exporters received 1 percent of gross receipts from exports in tax refunds, dropping to 0.1 percent for 2016, and increasing to 2 percent for 2017. In May 2018, Decree 9393 established a permanent rate of 0.1 percent beginning June 1, 2018.

For the majority of products eligible for Reintegra benefits, the total cost of imported inputs cannot exceed 40 percent of the export price of the product. For a small number of eligible products, the total cost of imported inputs cannot exceed 65 percent of the export price.

In 2017, Brazil’s National Bank for Economic and Social Development (BNDES) provided R$70.8 billion (approximately $22.2 billion) in preferential financing to various sectors of the Brazilian economy through several different programs. BNDES financing increased substantially from 2007 to 2014 as the government's response to the global economic crisis and former President Rousseff's policy to use BNDES as a driver for economic development. BNDES’ loan portfolio decreased considerably starting in 2015, by 27.6 percent, with a further decrease of 35.1 percent in 2016. The downward trend continued in 2017 with a decrease of 19.8 percent, followed by a decrease of 2 percent in 2018. From January to September 2018, BNDES financed R$ 43.6 billion (approximately $12.1 billion).

Local content requirements (LCRs) for loans to purchase machinery, equipment, industrial systems, and components were previously set at 60 percent, but as of December 3, 2018, BNDES reduced LCRs to a minimum level of 30 percent. Loans for large-scale solar power systems remained the same as under the previous LCR requirements, and there continue to be complex state-specific tax incentives that distort the real price of distributed solar power. BNDES also provides preferential financing for wind and solar farm development, contingent upon progressively more stringent LCRs. Wind turbine suppliers of any nationality are eligible to receive preferential BNDES financing, provided the wind towers are built with at least 70 percent Brazilian steel, and photovoltaic suppliers must use 60 percent Brazilian-made components by 2020.

Another BNDES program, Special Agency for Industrial Financing (FINAME), provides preferential financing for the sale and export of Brazilian machinery and equipment, and provides financing for the purchase of imports of such goods provided that such goods are not produced domestically. The financing is used primarily for capacity expansion and equipment purchases in industries such as agriculture and infrastructure. In 2017, BNDES funding for FINAME was approximately R$19.7 billion (approximately $6.2 billion), an increase of 27.8 percent from 2016 levels. In the first half of 2018, BNDES provided loans totaling approximately R$7.9 billion (approximately $2.19 billion).

In September 2018, BNDES announced a program specifically focusing on the renewable energy sector: FINAME Renewable Energy. Under the program, a credit line with an initial allocation of R$2.2 billion (approximately $609 million) can be accessed by individuals, condominium owners, micro, small, and medium-sized enterprises (SMEs), farmers, unions, and companies based in Brazil. The credit line allows participating entities to invest in the purchase or installation of photovoltaic systems of up to 375kW, wind turbines of up to 100kW, solar heaters and collectors for water heating, as well as receive financing of up to 30 percent of working capital. LCRs apply to FINAME Renewable Energy loans.

In 2017, the Brazilian Congress approved a change to BNDES' preferential long-term lending rate. The new rate is being phased in over a five-year period that started in January 2018 and is inflation-indexed to National Treasury bonds. BNDES previously controlled nearly the entire long-term lending market in Brazil because of preferential lending rates. Under the new rate, private banks will likely be better positioned to compete with BNDES.

In 2017, BNDES provided preferential financing of R$14.37 billion (approximately $4.5 billion) for agriculture and livestock markets. This represented 20 percent of the total amount BNDES loaned throughout the year. Of all FINAME loans, 57.3 percent were used to finance the purchase of machinery and equipment, and 40 percent were used to finance fixed asset implementation, expansion, recovery and modernization, research and development, and innovation.

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) suspends Social Integration Program (PIS) and Contribution to Social Security Financing (COFINS) taxes on goods imported and information technology services provided by companies that commit to export software and information technology services to the extent that those exports account for more than 50 percent of the company's annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least two years to export goods and services that account for at least 50 percent of the company's overall gross income for the previous calendar year.

Brazil provides tax reductions and exemptions on many domestically produced ICT and digital goods that qualify for status under the Basic Production Process (Processo Produtivo Básico, or PPB) through the Lei de Informática (Law on Computing Technology). The PPB is product-specific and stipulates which stages of the manufacturing process must be carried out in Brazil in order to be considered produced in Brazil. Tax exemptions are also provided for the development and build-out of telecommunications broadband networks that utilize locally developed products and investments under the Special Taxation Regime for the National Broadband Installation Program for Telecommunication Networks (Regime Especial de Tributação do Programa de Banda Larga para Implantação de Redes de Telecomunicações, or REPNBL-Redes).

In 2013, Brazil passed the Special Regime for the Development of the Fertilizer Industry (REIF). Under this program, fertilizer producers receive tax benefits, including an exemption for the IPI on imported inputs, provided they comply with minimum LCRs and can demonstrate investment in local research and development projects.

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions, and tax credits. Brazil establishes minimum guaranteed prices for specific commodities through different programs to ensure that the returns to producers do not fall below the guaranteed level. These programs include the Federal Government Acquisition (AGF) program, the Acquisition from Public Option Contracts (POC) program, the Premium for Product Outflow (PEP) program, and the Premium Equalizer Payment to the Producer (PEPRO) program. Under the AGF and POC programs, the Brazilian government purchases commodities to maintain prices at the level of the minimum guaranteed price. Under the PEP and PEPRO programs, producers or processors receive a government payment in return for purchasing commodities that are either shipped to specified regions in Brazil or exported. The primary difference between these two programs is that the PEP payment goes to the purchaser of the commodity while PEPRO facilitates payments through an auctioning system to producers or cooperatives, but the administration of the programs is the same. The amount of the PEP/PEPRO payment is based on the difference between the minimum price set by the government and the prevailing market price. Each PEP/PEPRO auction notice specifies the tendered commodity and the approved destination for that product, including export destinations.

From 2004 through 2018, approximately 44 million metric tons (mmt) of commodities received assistance under PEPRO at a cost of R$4.947 billion (approximately $2.32 billion). Most of that assistance was for cotton, corn, soybeans, and wheat. In 2017, PEPRO payments of approximately R$487.9 million (approximately $153.0 million) were disbursed to corn and wheat producers. The program supported 7.3 mmt of corn and 468,073 metric tons (mt) of wheat. From 2004 to 2018, approximately 36 mmt of commodities received assistance under PEP at a cost of approximately R$3.34 billion (approximately $1.7 billion). Corn and wheat received the vast majority of this assistance. In 2017, PEP payments of R$103.3 million (approximately $32.4 million) supported 1.66 mmt of corn and 63,800 mt of wheat. In 2018, both PEP and PEPRO programs solely supported rice producers. In that year, the PEPRO program supported 109,325 mt of rice, totaling R$8.9 million (approximately $2.43 million), and PEP supported 390,176 mt, totaling R$22.15 million (approximately $6.05 million). The United States has asked Brazil to provide additional information on these programs in meetings of the WTO Committee on Agriculture for several years and will continue to monitor their use.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement (GPA) but became an observer to the WTO Committee on Government Procurement in October 2017. By statute, a Brazilian state enterprise may subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms. U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and are, comparatively, more successful in subcontracting with larger Brazilian firms instead.

Brazil grants procurement preference to firms that produce in Brazil and that fulfill certain economic stimulus requirements, such as generating employment or contributing to technological development, even if those firms' bids are up to 25 percent more expensive than bids submitted by foreign firms not producing in Brazil. The law allows for "strategic" ICT goods and services procurements to be restricted to those with indigenously developed technology. Presidential Decree 8.135, adopted in 2013, imposes cyber-auditing requirements on IT systems used by Brazilian government entities. The implementation process continues in stages and is a concern for U.S. technology companies because of the potentially prohibitive costs of certifying a system for an individual market. In August 2016, the Ministry of Planning announced its intention to revoke the decree in favor of approved hardware and software solutions for government entities, but has not yet issued an alternative measure.

In 2003, the Brazilian National Oil and Gas Regulatory Agency (ANP) created minimum LCRs for all oil companies operating in Brazil's upstream exploration and production phases, including State-controlled Petrobras. The LCRs vary by hydrocarbon resource block (the geographic area that is awarded by the Brazilian government to companies for oil and gas exploration), and within that block the LCRs differ for equipment, workforce, and services. Beginning with offshore bid rounds in 2003, LCRs were as low as 30 percent. Over time, ANP requirements have gradually become more rigorous, with LCRs between 37 percent and 60 percent for the oil blocks auctioned between 2003 and 2016. However, on February 22, 2017, Brazil announced reforms to LCRs for Brazil's critical oil and gas sector. LCRs for deepwater oil and gas exploration fell by half on average, to a minimum of 18 percent – down from 37 percent for previous auctions – and LCRs for deepwater production fell to between 25 percent and 40 percent, depending on the activity, down from 55 percent. Onshore exploration and development LCRs, currently 70 percent and 77 percent, respectively, decreased to 50 percent.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil remained on the Special 301 Watch List in 2018. Brazil is an increasingly important market for intellectual property (IP) intensive industries; however, administrative and enforcement challenges continue, including high levels of counterfeiting and piracy online and in physical markets. Increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay, and stronger deterrent penalties, are critical to make sustained progress on these IP concerns. The National Council on Combating Piracy and Intellectual Property Crimes (CNCP) was an effective entity for carrying out public awareness and enforcement campaigns, although in recent years it has not delivered the same kinds of achievements.

Positive developments at the National Institute of Industrial Property (INPI) include the hiring of new examiners, additional funding, reduced patent and trademark backlogs, and streamlined procedures for certain reviews, including those pursuant to the 2016 Patent Prosecution Highway pilot program, originally limited in Brazil to oil and gas industry applications and expanded in 2018 to encompass information technologies. Concerns remain about delays in the review of patent and trademark applications. To resolve concerns about duplicative reviews by Brazil's National Sanitary Regulatory Agency (ANVISA) of pharmaceutical patent applications presented before INPI, an April 2017 agreement between INPI and ANVISA redefined ANVISA's role in order to expedite the examination of such applications. The United States will monitor implementation of this agreement.

Furthermore, while Brazilian law and regulations provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for veterinary and agricultural chemical products, similar protection is not provided for pharmaceutical products. The United States also remains concerned about INPI's actions to invalidate or shorten the term of a significant number of "mailbox" patents for pharmaceutical and agricultural chemical products. The United States will continue to engage Brazil on these and other IP-related issues.

SERVICES BARRIERS

Audiovisual Services

Brazil imposes a fixed tax on each foreign film released in theaters, foreign home entertainment products, foreign programming for broadcast television, and foreign content and foreign advertising released on the cable and satellite channels. The taxes are significantly higher than the corresponding taxes levied on Brazilian products. In addition, 80 percent of the programming aired on "open broadcast" (non-cable) television channels must be Brazilian, and foreign ownership in media outlets is limited to 30 percent, including the print and "open broadcast" television sectors.

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. As an alternative to paying the full tax, producers can elect to invest 70 percent of the tax value in local independent productions. In addition, local distributors of foreign films are subject to a levy equal to 11 percent of remittances to the foreign producer. This levy, a component of the CONDECINE (Contribution to the Development of a National Film Industry), is waived if the distributor agrees to invest an amount equal to three percent of the remittance in local independent productions. Remittances for video on demand (VOD) are also subject to CONDECINE and would be subject to further regulation under proposed law PL 8889/2017, which includes incentives for Brazilian production and minimum quotas for Brazilian content structured to increase progressively with company revenue. The CONDECINE levy is also assessed on foreign-produced video and audio advertising. In May 2017, Normative Instruction 134 extended this requirement to online advertising.

Brazil requires that all films and television shows be printed locally by prohibiting the importation of color prints for the theatrical and television markets. Brazil also maintains domestic film quotas for theatrical screening and home video distribution.

In 2011, Brazil enacted Law 12.485, which covers the subscription television market, including satellite and cable television. The law permits telecommunication companies to offer television packages with their services and removes the previous 49 percent limit on foreign ownership of cable television companies. However, the legislation also imposes local content quotas by requiring every channel to air at least three and a half hours per week of Brazilian programming during prime time, and by requiring that one-third of all channels included in any television package be Brazilian. The law also makes subscription television programmers subject to the 11 percent CONDECINE levy on remittances. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, ANCINE, which raises concerns about the objectivity of regulatory decisions.

Express Delivery

U.S. express delivery service companies face significant challenges in the Brazilian market due to numerous barriers, including high tariffs, an automated express delivery clearance system that is only partially functional, and the lack of a *de minimis* exemption from tariffs for express delivery shipments. Brazil's $50 *de minimis* exemption applies only to postal service shipments to individuals.

The Brazilian government charges a flat 60 percent duty for all goods imported through the Simplified Customs Clearance process. The Simplified Customs Clearance process limits commercial shipments to $100,000 per importer per year. Moreover, Brazilian Customs has established express services maximum per-shipment value limits of $10,000 for exports and $3,000 for imports. Express delivery companies may transport shipments of higher value, but such shipments are subject to the formal entry, exit, and declaration process.

Financial Services

Brazil maintains reciprocity requirements for foreign banks and insurers to establish in Brazil. Foreign banks may establish subsidiaries, but Brazilian residents must be directly responsible for the administration of the financial institution. Institutions legally registered in Brazil are considered Brazilian, regardless of foreign ownership. Since 1995, entry into the banking sector through branching has not been permitted, but some existing banks were grandfathered in. Branches of foreign banks already established in Brazil must meet the same capital requirements as subsidiaries and are subject to other burdensome requirements.

Brasil Resseguros SA, a state-controlled company, monopolized the provision of reinsurance in Brazil until the enactment of Complementary Law 126 in 2007, which allowed private reinsurers to operate in the Brazilian market. Under Complementary Law 126/2010, for a foreign company to qualify as an admitted reinsurer, it must have a representative office in Brazil; meet the requirements of Complementary Law 126/2007; keep an active registration with Brazil's insurance regulator (the Superintendent of Private Insurance (SUSEP)); and maintain a minimum solvency classification issued by a risk classification agency equal to Standard & Poor's or Fitch ratings of at least BBB-, according to CNSP Resolution 168. CNSP Resolution No. 322 of 2015 provides that the preferential offers to local reinsurers of at least 40 percent will be gradually decreased to 15 percent by January 1, 2020.

Telecommunications Services

Local Content Requirements

The rules governing spectrum auctions in Brazil have required winning bidders to provide a preference for technology, services, equipment, and materials produced in Brazil as they built out their networks. In Brazil's most recent auction in November 2015, for the 1.8, 1.9, and 2.5 GHz spectrum bands, the auction rules provided that in the case of equivalent winning bids (*i.e.*, a tie), there would be a preference for the bid utilizing services, equipment, or materials produced in Brazil, including those with national technology. ANATEL announced in December 2018 that it would auction the remaining frequencies in the 700 MHz band in the second half of 2019 or the first half of 2020.

Among the major regulations of concern are the Certification of National Technology Software and Related Services (or CERTICs) and the Basic Production Process (8248/1991). Brazil's Bigger IT Industrial Plan (TI Maior) includes the CERTICs certification component, which favors software developed in Brazil in public procurement processes. Although some stakeholders report that the policy has not been applied recently, it has not been formally rescinded. Under the Basic Production Process, Brazil provides tax incentives for locally sourced information and ICT equipment. In August 2017, a WTO dispute settlement panel found Brazil's Informatics program, which confers tax benefits and imposes LCRs favoring Brazilian goods, to be inconsistent with Brazil's obligations under the General Agreement on Tariff and Trade (GATT 1994), the WTO Agreement on Trade-Related Investment Measures (TRIMS) and the WTO Agreement Subsidies and Countervailing Measures. The Appellate Body upheld these findings in a report issued in December 2018.

Satellites

Brazil permits Brazilian-owned entities to acquire the exclusive right to operate a satellite and its associated frequencies from specific Brazilian orbital locations. However, foreign-licensed satellite operators may obtain only a non-exclusive right (a landing right) to provide service in Brazilian territory. ANATEL grants these landing rights for a fixed term of no longer than 15 years, after which the operator must reacquire the landing rights in order to continue providing services. Foreign operators are also required to pay annual landing fees, which are determined by the reserve amounts at auction set by ANATEL and have increased

17-fold between 2006 and 2015 (latest data available). Landing fees for foreign companies in Brazil are unpredictable and higher than for Brazilian firms.

Roaming

ANATEL ruled that FISTEL, a local regulatory tax applied to active subscriber identity module cards (SIMs) within Brazil, may only be applied to domestic carriers utilizing domestic SIMs with corresponding local numbering. As foreign-based carriers using foreign SIMs are not subject to FISTEL, ANATEL concluded that these value-added services may only be provided by locally licensed carriers using local SIMs. This ANATEL interpretation restricts permanent roaming options for international machine–to-machine (M2M) and Internet of things (IoT) providers, thus requiring development of devices solely for the Brazilian market, and requiring service infrastructure in Brazil. This interpretation is at odds with other jurisdictions that have consistently permitted foreign carriers to utilize foreign SIMs to provide permanent roaming for M2M or IoT services to their respective OEM customers.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

In August 2018, Brazil adopted a measure on the protection of personal data, Law 13,709. In signing the bill, the President vetoed portions of it, including those that would have created an independent Data Protection Authority. The measure will not take effect until February 2020. The law will apply to any processing of the personal data of Brazilians done by people or entities, regardless of the type of means, the country where the data is located, or the headquarters of the entity.

Internet Services

Internet services often add to innovation, competition, and consumer welfare in existing or new markets. Application of existing regulation designed for different services to such Internet services without due consideration of the characteristics of the new service at issue and the technical feasibility of imposing the requirements may create unnecessary barriers to trade and investment. Brazil has enacted regulations on app-based services that limit drivers from providing transportation services, but on March 27, 2018, a new law came into effect that removed the most onerous ride share restrictions on licensing, vehicle plates, car ownership, and trips crossing municipal lines. However, the law still allows municipalities to continue to regulate mobile applications for transportation.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

The National Land Reform and Settlement Institute administers the purchase and lease of Brazilian agricultural land by foreigners. Under the applicable rules, the area of agricultural land bought or leased by foreigners cannot account for more than 25 percent of the overall land area in a given municipal district. Additionally, no more than 10 percent of agricultural land in any given municipal district may be owned or leased by foreign nationals from the same country. The law also states that prior consent is needed for purchase of land in areas considered indispensable to national security and for land along the border. The rules also make it necessary to obtain congressional approval before large plots of agricultural land can be purchased by foreign nationals, foreign companies, or Brazilian companies with majority foreign shareholding. Draft Law 4059/2012, which would lift the limits on foreign ownership of agricultural land, has been awaiting a vote in the Brazilian Congress since 2015.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was $169 million in 2018, a 71.5 percent increase ($70 million) over 2017. U.S. goods exports to Brunei were $267 million, up 120.2 percent ($146 million) from the previous year. Corresponding U.S. imports from Brunei were $98 million, up 330.3 percent. Brunei was the United States' 124th largest goods export market in 2018.

U.S. exports of services to Brunei were an estimated $55 million in 2017 (latest data available) and U.S. imports were $9 million. Sales of services in Brunei by majority U.S.-owned affiliates were $110 million in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Brunei (stock) was $19 million in 2017 (latest data available), a 18.8 percent increase from 2016.

TRADE AGREEMENTS

Brunei is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Brunei, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Brunei and the other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. In addition to the ASEAN trading partners listed above, Brunei also has a bilateral trade agreement with Pakistan. Brunei is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand. Brunei is also participating in the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which it has signed but not yet ratified.

IMPORT POLICIES

Tariffs

Brunei’s Most Favored Nation (MFN) applied tariff rate averaged 0.2 percent in 2017 (latest data available). Brunei’s MFN applied tariff rate averaged zero percent for agricultural products and 0.3 percent for non-agricultural products in 2017. Brunei has bound 95.5 percent of its tariff lines, with a simple average WTO bound tariff rate of 25.5 percent. Brunei’s highest WTO bound tariff rate is for tobacco and is over 1,000 percent; the highest WTO bound tariff rate for (non-tobacco) agricultural products is 50 percent and for industrial products is 40 percent.

Brunei introduced new tariff and trade classifications in 2017 to incorporate the ASEAN Harmonized Tariff Nomenclature. In 2017, Brunei also amended its customs import and excise duties. Import duties were replaced by excise duties in categories such as instant coffee, carpets and textile floor coverings, headgear, cosmetics, electrical goods, automotive parts, apparel and clothing, jewelry, and clocks. Brunei also imposed excise duties on food products with high sugar content and monosodium glutamate, and increased excise duties on restricted goods such as tobacco and e-cigarettes.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Brunei deposited with the WTO Secretariat its instrument of acceptance ratifying the WTO Trade Facilitation Agreement on December 15, 2015.

TECHNICAL BARRIERS TO TRADE

Halal Standards

Most food sold in Brunei must be certified as halal. However, there is a small market for non-halal foods, which must be sold in designated rooms in grocery stores separated from other products or at restaurants that are specified as non-halal. The Ministry of Religious Affairs administers Brunei's halal standards, which are among the most stringent in the world. Regulations enacted in May 2017 require all businesses that produce, supply, and serve food and beverages to obtain a halal certificate.

The Codex Alimentarius Commission (Codex) allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. However, under Brunei's Halal Meat Act, halal meat (including beef, mutton, lamb, and chicken) can be imported only by a person holding a halal import permit and an export permit from the exporting country. Additionally, the importers and local suppliers of halal meat must be Muslim. The Bruneian government maintains a list of the foreign and local slaughtering centers (abattoirs) that have been inspected and declared fit for supplying meat that can be certified as halal. Brunei's stringent system of abattoir approval involves on-site inspections carried out by Bruneian government officials for every establishment seeking to export meat or poultry to Brunei. Halal meat must be kept separately from non-halal meat at all times, and halal certification must be renewed annually by the Brunei Religious Council.

GOVERNMENT PROCUREMENT

Under current Brunei regulations, government procurement is conducted by individual ministries and departments, which must comply with financial regulations and procurement guidelines issued by the State Tender Board of the Ministry of Finance and Economy. Tender awards above BND $500,000 (approximately $380,000) must be approved by the Sultan in his capacity as Minister of Finance and Economy, based on the recommendation of the State Tender Board.

Most invitations for tenders or quotations are published in a bi-weekly government newspaper, but are often selectively tendered only to locally registered companies. Some ministries and departments publish tenders on their individual websites. Foreign firms may participate in the tenders individually, but are advised by the government to form a joint venture with a local company.

Brunei is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2017, Brunei acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. Concerns remain in some intellectual property rights areas, however, including with respect to whether Brunei provides effective protection against unfair commercial use as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

OTHER BARRIERS

Localization

Brunei's Local Business Development Framework seeks to increase the use of local goods and services, train a domestic workforce, and develop Bruneian businesses by placing requirements on all companies operating in the oil and gas industry in Brunei to meet local hiring and contracting targets. These requirements also apply to information and communication technology firms that work on government projects. The Framework sets local content targets based on the difficulty of the project and the value of the contract, with more flexible local content requirements for projects requiring highly specialized technologies or with a high contract value.

Residency Requirement

Companies can be 100 percent foreign-owned, although under the Companies Act, at least one of two directors of a locally incorporated company must be a resident of Brunei, unless granted an exemption by the government.

Transparency

Transparency is lacking in many areas of Brunei's economy, particularly in its state-owned enterprises that manage key sectors of the economy such as oil and gas, telecommunications, transport, and energy generation and distribution.

BURMA

TRADE SUMMARY

The U.S. goods trade deficit with Burma was $232 million in 2018, a 49.7 percent increase ($77 million) over 2017. U.S. goods exports to Burma were $264 million, up 24.7 percent ($52 million) from the previous year. Corresponding U.S. imports from Burma were $496 million, up 35.3 percent. Burma was the United States' 125th largest goods export market in 2018.

TRADE AGREEMENTS

Burma is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Burma, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Burma and the other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. Burma is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand.

IMPORT POLICIES

Tariffs

Burma has bound only 18 percent of its tariffs with the WTO. Burma’s Most Favored Nation (MFN) WTO bound tariff rate averages 83.3 percent, while the Most Favored Nation (MFN) applied tariff rate averages 6.5 percent. The WTO bound tariff rate for agricultural goods averages 102.9 percent; the WTO applied tariff rate averages 9.5 percent. The WTO bound rate for non-agricultural goods averages 21.3 percent; the WTO applied tariff rate averages 6.0 percent.

Nontariff Barriers

Import Bans

The Ministry of Commerce maintains a list of prohibited imports; within the Ministry, the Department of Trade oversees amendments to the list. The list is published in trade bulletins and publications, but changes with little notice. The current list includes counterfeit money and goods, pornographic articles, narcotic drugs, playing cards, arms and ammunition, antiques and archeologically valuable items, endangered species, and items featuring images of the Buddha, Burma’s pagodas, and the flag of Burma.

Labelling Requirements

In 2018, the Department of Consumer Affairs and the Department of Food and Drug Administration issued new product labelling requirements for consumer goods, which require specific information to be translated into Burmese.

Import Licensing

Burma requires import licenses to trade in a wide range of products. A Ministry of Commerce process to reduce redundant documentary requirements involves reducing the number of products subject to licensing. Out of 9,558 HS 8-digit tariff items, 4,405 items still require import licenses.

Burma manages imports of all agricultural products through an import licensing process that is not automatic and varies by product. For example, receiving an import license for meat products requires approval from the Myanmar Meat Import Board, a quasi-government body consisting largely of representatives from local livestock companies. This arrangement appears to allow domestic meat producers to block market access for U.S. meat products. While import licenses for beef have been granted with relative reliability since 2015, they are few in number and cover small volumes. However, the issuance of permits for poultry and pork imports has mostly come to a halt. The Ministry of Commerce has also reportedly used import permits as a barrier to trade in other products. For example, in 2018, the Ministry of Commerce decided to not issue import permits for fresh potatoes and corn grains in response to a request for protection, and did not notify trading partners or the WTO of this new ban. The process for applying for an import permit is also cumbersome, requiring a signed contract to be included with the application. This locks importers into contracts before they have a permit, creating a liability for the buyers if the permit is not issued.

Customs Barriers and Trade Facilitation

Both local and foreign businesses have raised concerns that the Customs Department engages in practices that are nontransparent and appear arbitrary. Importers frequently cite concerns with customs valuation practices. For some commodities, the Customs Department reportedly uses its own reference guide to determine the value of imports. The guide lists prices in kyat based on the price of these goods in Burma, which is sometimes substantially lower or higher than their value outside Burma.

SANITARY AND PHYTOSANITARY BARRIERS

Burma requires additional testing for each shipment of most imported agricultural products upon arrival in Burma, despite laboratory testing of agricultural products during the license approval process. These testing and inspection procedures do not appear to align with international standards for risk-based inspection of imports. Burma is attempting to revise its food laws to move to a risk-based system rather than one that relies on 100 percent testing. The United States is monitoring Burma's development of a new comprehensive food law that would replace existing laws and consolidate them into one law.

SUBSIDIES

The Burmese government provides tax incentives for companies to invest in the Thilawa Special Economic Zone (SEZ), with export-oriented firms exempt from taxes for seven years and other firms exempt for five years. The 2016 Myanmar Investment Law provides tax and tariff exemptions for many types of activities by domestic and foreign firms investing within specific zones.

GOVERNMENT PROCUREMENT

Burma issued new procurement procedures in January 2017, with a goal of increasing transparency and accountability. This guidance called for an open tender for procurement of goods, services, and construction services valued at above 10 million Myanmar Kyat (approximately $6,400).

Burma is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The government submitted four draft intellectual property laws regarding trademarks, patents, industrial designs, and copyright to Parliament in August 2017. The Parliament passed all four laws in early 2019.

SERVICES BARRIERS

A 1989 law stipulates that state owned enterprises have the sole right to carry out economic activities in a range of sectors, including teak extraction, oil and gas, banking and insurance, and electricity generation. In practice, however, the government has opened many of these areas to private sector development and foreign investment, including through the 2016 Investment Law.

In January 2019, the Ministry of Planning and Finance announced that it would permit up to three foreign life insurance firms to operate wholly owned subsidiaries. Other foreign life and non-life insurers with existing representative offices in Burma will be allowed to form joint ventures with a local partner. Foreign banks are allowed to operate in Burma, and on November 8, 2018, the Central Bank issued a directive allowing licensed foreign banks to offer any financing services or other banking services to local corporations. Previously, foreign banks were limited to providing export financing and related banking services to local corporations. The U.S. Government continues to closely monitor Burma's development of regulations in the area of electronic payments, with a view towards ensuring that the measures adopted facilitate competition and a level playing field for U.S. electronic payment service suppliers.

INVESTMENT BARRIERS

Burma has a challenging investment climate with respect to access to finance, land titles, transportation costs, energy supplies, and availability of skilled workers. Investors report difficulties with the enforcement of contracts, protection of minority investors, and resolution of insolvency.

In 2016 Burma adopted the Myanmar Investment Law, which consolidated the Myanmar Citizens Investment Law and the Foreign Investment Law into a single instrument. In April 2017, implementing rules for the law went into effect. The law and implementing rules have made the legal environment for investment more predictable, but the environment remains ambiguous and uncertain in key respects, including related to transparency.

In 2017 Burma issued its Negative Investment List, which identified 9 sectors in which investment is prohibited; 12 sectors in which only domestic investment is allowed; 22 sectors that require a joint venture; and other sectors that are open to 100 percent foreign investment.

In May 2018, Burma's Ministry of Commerce opened the retail and wholesale sectors for permitted products to foreign-owned companies and joint ventures that meet minimum capital requirements. The full list of permitted products was published in July 2018 and includes consumer goods, agricultural products, household and kitchen goods, pharmaceuticals, electronics, machinery, and motor vehicle parts, among other products.

In addition, Burma adopted a new Companies Law, which went into effect in August 2018 and replaced the Companies Law of 1914. The new law changes the definition of a "foreign company" to a company with more than 35 percent ownership by an overseas corporation or foreign person. This is a significant change from the old version of the law under which if one share of a company was held by a foreign company or individual, it was considered a "foreign company" and could not own land, hold long-term leases without Myanmar Investment Commission approval, or participate in sectors restricted to domestic companies (banking, insurance, real estate, importing, and more). While the new law makes a number of positive changes, there are still potential challenges with implementation and questions about the impact of these changes.

OTHER BARRIERS

Smuggling

The smuggling of products, including teak, gems, timber, wildlife, and narcotics remains significant. Burma has porous borders and significant natural resources, many of which are in parts of the country that the government does not fully control. Burma remains the primary source of the region's illicit narcotics, and is estimated to be the world's largest source of methamphetamines. The underdeveloped banking system, the low risk of enforcement and prosecution, and the large illicit economy breed criminal activity and facilitate transnational crime.

Bribery and Corruption

The government has prioritized fighting corruption, but underdeveloped justice and investigative institutions pose significant challenges to making the fight against corruption both systematic and effective. While corruption remains widespread, recent high-profile corruption cases indicate slow but steady improvements. Situations where corruption has a particular effect on economic development include seeking investment permits, paying taxes, applying for import and export licenses, and negotiating land and real estate leases.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $3.4 billion in 2018, a 26.7 percent increase ($713 million) over 2017. U.S. goods exports to Cambodia were $447 million, up 11.6 percent ($46 million) from the previous year. Corresponding U.S. imports from Cambodia were $3.8 billion, up 24.8 percent. Cambodia was the United States' 104th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Cambodia (stock) was $151 million in 2017 (latest data available), a 11.9 percent increase from 2016.

TRADE AGREEMENTS

Cambodia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Cambodia, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Cambodia and the other ASEAN countries signed a free trade Agreement with Hong Kong, but it is not yet in force. Cambodia is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand.

IMPORT POLICIES

Tariffs

Cambodia’s Most Favored Nation (MFN) WTO bound tariff rate averaged 19.5 percent, while the MFN applied tariff rate averaged around 11.1 percent. Cambodia’s highest applied tariff rate is 35 percent, which is imposed across a number of product categories, including a wide variety of prepared food products, bottled and canned beverages, cigars and cigarette substitutes, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Both local and foreign businesses have raised concerns that the Customs and Excise Department engages in practices that are nontransparent and that appear arbitrary. Importers frequently cite problems with undue processing delays, burdensome paperwork, and unnecessary formalities. Some importers have noted that duties imposed on the same products, shipped in the same quantity, but at different times of the year, can vary for unknown reasons.

Cambodia ratified the WTO Trade Facilitation Agreement on February 12, 2016.

TECHNICAL BARRIERS TO TRADE

In order to improve automotive safety and implement the ASEAN mutual recognition agreement on automobile standards, the government of Cambodia in June 2016 passed a regulation (Prakas No. 150) recognizing United Nations Economic Commission for Europe (UNECE) technical standards for automobiles and automotive products. The regulation, which is due to go into effect in June 2019, would prevent new vehicles and automotive parts compliant with U.S. standards from entering Cambodia. The United States and Cambodia continue to engage on this issue.

GOVERNMENT PROCUREMENT

By law, government procurement must be carried out through one of four methods: bids by international competition, bids by domestic competition, price consulting, or price surveys. Included in the criteria of each method are the minimum prices of the bids, levels of domestic resources, and technical capacity. The government has a general requirement for competitive bidding in procurements valued over KHR 100 million (approximately $25,000). In some cases, particularly for procurements valued below $1 million, advertisements and application forms are written in the Khmer language, which may place foreign firms at a disadvantage. Procurements valued above $1 million are typically conducted entirely in English. Government procurement is often not transparent, and the Cambodian government frequently provides short response times to public announcements of tenders, which are posted on the Ministry of Economy and Finance's website. For construction projects, only bidders registered with the Ministry are permitted to participate in tenders. As an additional complication, differing prequalification procedures exist at the provincial level, making some bids particularly complex for prospective contractors.

Irregularities in the government procurement process are common despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at a number of ministries, the Cambodian government has taken little action to investigate irregularities. In February 2018, the government issued a new regulation on procedures to resolve complaints about irregularities in government procurement. The regulation covers all procurement conflicts except those already being addressed through arbitration, those involving military secrets, and concession projects that are regulated separately. The impact of the regulation is not yet clear.

Cambodia is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The U.S. Government has some concerns regarding the protection and enforcement of intellectual property rights (IPR) in Cambodia. Pirated CDs, DVDs, software, garments, and other copyrighted materials, as well as an array of counterfeit goods, including pharmaceuticals, reportedly are widely available in Cambodian markets. The rates of signal and cable piracy also remain high, and online sites purveying pirated music, films, eBooks, software, and television shows are spreading and gaining in popularity. Despite events to raise awareness of IPR, sales of legitimate films have been negatively affected due to the rising popularity of illegal cinemas that show pirated material. Draft legislation that would address protection of trade secrets has been under review at the Ministry of Commerce but has not been passed into law. In addition, draft legislation on encrypted satellite signals is still under review at the Ministry of Posts and Telecommunications, and draft legislation on semiconductor layout designs is under review at the Ministry of Industry and Handicraft. The United States continues to meet with Cambodia under our bilateral Trade and Investment Framework Agreement (TIFA) and in other dialogues to urge Cambodia to take steps to improve IPR protection and enforcement.

Various Cambodian authorities work on IPR-related issues, including the Ministry of the Interior's Economic Police unit, the General Department of Customs and Excise, the Cambodia Import-Export Inspection and Fraud Repression Directorate General, the National Committee for Intellectual Property Rights, the Institute of Standards of Cambodia, and the Ministry of Commerce. The division of responsibility among these disparate institutions is not clearly defined. In an effort to combat counterfeiting, the Cambodia Counter Counterfeit Committee (CCCC), which is under the Ministry of the

Interior, serves as an umbrella agency for 14 organizations. In 2016, the CCCC launched a five-year strategic plan with a focus on targeting counterfeit products that cause a high risk to health and social safety. The CCCC has not yet focused on other counterfeit products.

In 2016, Cambodia acceded to the Patent Cooperation Treaty and the Hague Agreement Concerning the International Registration of Industrial Designs. The Ministry of Industry and Handicrafts Office of Patents and Industrial Design has indicated that it is planning to join the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in the future, but has not yet committed to a timeline.

Procedures to record and file permission letters for imported goods bearing trademarks were established by the Ministry of Commerce in May 2016. Owners of trademarks registered in Cambodia and their distributors can apply to the Ministry's Department of Intellectual Property Rights to have their commercial relationship recognized as an exclusive dealership. Companies with registered exclusive dealership status have the right to request enforcement actions against parallel importers of their registered trademark. However, it is not yet clear what recourse companies with registered exclusive dealership status will have when reporting infringement of their trademarks, and which processes they will have to follow in order to initiate enforcement actions.

INVESTMENT BARRIERS

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure, but stipulates that no more than 70 percent of a building can be foreign-owned, and that foreigners cannot own property within 30 kilometers of the national border. Although foreign investors may use land through concessions and renewable leases, the Cambodian government in 2012 imposed a moratorium on Economic Land Concessions (ELCs), which allowed long-term leases of state-owned land. The Cambodian government reportedly also has reviewed and revoked previously-granted ELCs on the grounds that the recipients had not complied with the ELC terms and conditions. In November 2018, the government said the ELCs now cover 1.1 million hectares of land in 19 out of 25 provinces, though land rights activists estimate the figure is closer to 2 million hectares. However, only about 40 percent of ELCs generate revenues for the government. About 748,064 hectares of land have been revoked due to inactivity.

Cambodia permits 100 percent foreign ownership in most sectors; however, investment in movie production, rice milling, gemstone mining and processing, publishing and printing, radio and television, wood and stone carving production, and silk weaving is subject to equity restrictions or authorization.

While Cambodia has made significant progress in formalizing its tax regime and increasing tax revenues, reports suggest that the General Department of Taxation's (GDT's) methods can be very burdensome on tax-compliant companies, hitting some companies with exorbitant, unexplained, or arbitrary tax bills and freezing assets for failure to pay purported back taxes. Additional concerns range from surprise tax audits, to a lack of industry consultation when implementing new tax code, to a subjective application of taxes that could favor local industry over international investors.

Apart from tax issues, investors also report high electricity and logistics costs, poor infrastructure, lack of human resources, and corruption as challenges to establishing and maintaining investments.

SERVICES BARRIERS

Financial Services

In October 2017, the National Bank of Cambodia (NBC) began to implement the Cambodian Shared Switch (CSS). Under the CSS system, Cambodian debit card holders will be able to use their cards at any ATM or point-of-sale (POS) machine of any participating bank or microfinance deposit-taking institutions (MDI) for a fee. As of January 2018, banking regulations mandate that all banks and MDIs use the CSS for transactions that include balance inquiries, cash withdrawals, and inter-bank fund transfers, and at the merchant point-of-sale consumers have a choice of whether to use the CSS to process debit transactions. The government has indicated it hopes to expand the availability of CSS to process credit transactions in the future.

OTHER BARRIERS

Bribery and Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to investment, with Cambodia's judiciary viewed as one of the country's most corrupt institutions. In 2010, Cambodia adopted anti-corruption legislation and established a national Anti-Corruption Unit (ACU) to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. The ACU's participation in investigations of political opponents of the ruling party has tarnished its reputation as an unbiased enforcer of rules. The independence of the ACU is difficult to ascertain since the Chair and Vice Chair are chosen by the Prime Minister, and the remaining officials are appointed by various government entities.

Cambodia began publishing official fees for public services at the end of 2012 in an effort to combat "facilitation payments," but this exercise has yet to be completed. After national elections in July 2013, certain agencies, such as the Ministry of Commerce and the General Department of Taxation, started providing online information and services in an effort to reduce paperwork and unofficial fees. In addition, anti-corruption information has been incorporated into the national high school curriculum, and civil servants' salaries are disbursed through commercial banks. Businesses have noted that signing an anti-corruption Memorandum of Understanding (MOU) with the ACU has helped them avoid paying "facilitation payments."

Judicial and Legal Framework

Cambodia's legal framework is incomplete, and its laws are unevenly enforced. While the National Assembly has passed numerous trade and investment-related laws, including a law on commercial arbitration, many business-related laws are still pending. A 2014 Law on Court Structures established a Commercial Court with first-instance jurisdiction over all commercial matters, including insolvency cases, and a Commercial Chambers to hear all appeals arising out of the Commercial Court. Neither entity is formed or operating, however.

Smuggling

The illegal importation of products such as cosmetics, textiles, wood, sugar, vehicles, fuel, soft drinks, livestock, crops, and cigarettes remains widespread. The Cambodian government has worked to address this issue with limited success. It has issued numerous orders to stop smuggling, has created various anti-smuggling units within government agencies including the General Department of Customs and Excise, and has established a mechanism within this department to accept and act upon complaints from the private sector and foreign governments. The CCCC allows interested parties to file complaints with actionable information regarding smuggled goods.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $19.8 billion in 2018, a 15.9 percent increase ($2.7 billion) over 2017. U.S. goods exports to Canada were $298.7 billion, up 5.8 percent ($16.5 billion) from the previous year. Corresponding U.S. imports from Canada were $318.5 billion, up 6.4 percent. Canada was the United States' largest goods export market in 2018.

U.S. exports of services to Canada were an estimated $58.4 billion in 2017 (latest data available) and U.S. imports were $33.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were $117.2 billion in 2016 (latest data available), while sales of services in the United States by majority Canada-owned firms were $108.5 billion.

U.S. foreign direct investment (FDI) in Canada (stock) was $391.2 billion in 2017 (latest data available), a 7.1 percent increase from 2016. U.S. direct investment in Canada is led by manufacturing, nonbank holding companies, and finance/insurance.

TRADE AGREEMENTS

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (the Parties), entered into force on January 1, 1994. At the same time, the United States suspended the United States-Canada Free Trade Agreement, which had entered into force in 1989. Under the NAFTA, tariffs on nearly all goods were eliminated progressively, with all final duties and quantitative restrictions eliminated, as scheduled, by January 1, 2008. Canada still maintains tariffs on dairy, poultry, and egg products while the United States still maintains tariffs on dairy, sugar, and peanut products from Canada. After signing the NAFTA, the Parties concluded supplemental, and largely unenforceable, side agreements on labor and the environment.

United States-Mexico-Canada Agreement

The United States entered into negotiations with the Parties seeking to update and rebalance the NAFTA in August 2017. The United States-Mexico-Canada Agreement (USMCA) was signed on November 30, 2018, and will replace the NAFTA to better serve the interests of American workers, farmers, ranchers, and businesses.

The USMCA modernizes and rebalances U.S. trade relations with Canada and Mexico to benefit American workers and businesses and reduces incentives to outsource by providing strong labor and environmental protections, innovative rules of origin, and revised investment provisions. The Agreement also brings labor and environment obligations into the core text of the agreement and makes them fully enforceable. The Agreement is a mutually beneficial win for North American farmers, ranchers, businesses, and workers that, once implemented, will create more reciprocal trade with Canada and Mexico, support high-paying jobs for Americans, and help grow the U.S. economy. The USMCA expands U.S. access in Canada for certain U.S. dairy, poultry, and egg products, and once implemented, will help reduce costs and facilitate trade via new commitments on customs inspections, automation, and the treatment of low-value goods. In addition to these achievements, the Agreement upgrades the NAFTA in a number of key areas. For example, the USMCA establishes the strongest and most advanced provisions on intellectual property and digital trade ever included in a trade agreement. Finally, the USMCA also includes a number of ground-breaking provisions to combat non-market practices – such as subsidies and currency manipulation – that have the potential to disadvantage U.S. workers and businesses.

As detailed in this report, despite the NAFTA, a number of outstanding trade-related irritants with Mexico and Canada continue to exist. The USMCA contains a number of provisions that – once in force – are designed to address many of these issues. For example, the USMCA includes obligations to strengthen enforcement against counterfeiting and piracy, camcording of movies, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment. The USMCA also cracks down on data localization measures for services providers and financial services providers and locks in Mexico's telecommunications and energy reforms. The USMCA will also ensure that Canada eliminates its rule prohibiting simultaneous substitution of advertising for the Super Bowl. Finally, under the Agreement, Canada agreed to eliminate milk classes 6 and 7, discriminatory grading of U.S. wheat, and British Columbia's discriminatory treatment of U.S. wine in grocery stores.

IMPORT POLICIES

Tariffs

Effective July 1, 2018, Canada adopted tariffs ranging from 10 percent to 25 percent on various products imported from the United States, in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The imports to which the new tariffs apply include a range of agricultural products, consumer products, and manufactured goods, as well as products of steel and aluminum. The United States has urged Canada to work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engaging in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on July 16, 2018, the United States launched a dispute settlement proceeding against Canada in the WTO, challenging Canada's retaliatory tariffs.

Nontariff Barriers

<u>Agricultural Supply Management</u>

Canada uses supply-management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply-management regime involves production quotas, producer-marketing boards to regulate price and supply, and tariff-rate quotas (TRQs) for imports. Canada's supply-management regime severely limits the ability of U.S. producers to increase exports to Canada above TRQ levels and inflates the prices Canadians pay for dairy and poultry products. Under the current system, U.S. imports above quota levels are subject to prohibitively high tariffs (*e.g.*, 245 percent for cheese and 298 percent for butter).

The United States remains concerned about potential Canadian actions that would further limit U.S. exports to the Canadian dairy market. The United States continues to monitor closely any tariff reclassifications of dairy products to ensure that U.S. market access is not negatively affected.

Milk Classes

Canada establishes discounted prices for milk components for sales to domestic manufacturers of dairy products used in processed food products under the Special Milk Class Permit Program (SMCPP). These prices are "discounted," being lower than regular Canadian milk class prices for manufacturers of dairy products, and pegged to U.S. or world prices. The SMCPP is designed to help Canadian manufacturers of processed food products compete against imports into Canada and in foreign markets. An agreement reached between Canadian dairy farmers and processors in July 2016 introduced a new national milk class (Class 7) that establishes discount pricing for a wide range of Canadian dairy ingredients used in dairy products. Provincial milk marketing boards (agencies of Canada's provincial governments) began implementing Class 7 in February 2017. Class 7 is aimed at decreasing imports of U.S. milk protein substances into Canada and increasing Canadian exports of skim milk powder into third country markets.

The United States has raised its serious concerns with Class 7 with Canada bilaterally and at the WTO Committee on Agriculture and is examining these milk classes closely.

Restrictions on U.S. Grain Exports

A number of grain sector requirements limit the ability of U.S. wheat and barley exporters to receive a premium grade (a grade that indicates use for milling purposes as opposed to grain for feed use) in Canada, including the provisions of the Canada Grain Act and Seeds Act.

Under the Canada Grain Act, the inspection certificate for grain grown outside Canada, including U.S. grain, can only state the country of origin for that grain and not issue a grade. Also, the Canada Grain Act allows the Canadian Grain Commission to "establish grades and grade names for any kind of western grain and eastern grain and establish the specifications for those grades" by regulation. The explicit definitions of "eastern grain" and "western grain" as grain grown in the eastern and western divisions of Canada in the Canada Grain Act further underscores that grading is only available to Canadian grains. Under the Canada Grain Act, only grain of varieties registered under Canada's Seeds Act may receive a grade higher than the lowest grade allowable in each class.

U.S. wheat and barley can be sold without a grade directly to interested Canadian purchasers at prices based on contract specifications. However, contract-based sales are a relatively small proportion of all sales in Canada. Most sales occur through the bulk handling system in grain elevators. Canadian grain elevators offer economic efficiencies by collecting and storing grain from many small-volume growers, giving them the ability to fulfill larger contracts and to demand higher prices for that ability.

The barriers to assigning U.S. grain a premium grade encourages both a price discounting of high-quality U.S. grain appropriate for milling use and *de facto* segregation at Canadian elevators.

The United States will continue to press the Canadian government to move forward swiftly with legislative and any other necessary changes that would enable grain grown outside Canada to receive a premium grade and changes to its varietal registration system.

Ministerial Exemptions

Canada prohibits bulk imports of fresh fruits and vegetables in packages exceeding certain sizes (typically 50 kilograms) unless the government of Canada grants a Ministerial exemption. To obtain an exemption, Canadian importers must demonstrate that there is an insufficient supply of a product in the domestic market. The import restrictions apply to all fresh produce in bulk containers if there are grade names established in the respective regulations. For those horticultural products without prescribed grade names, there is no restriction on bulk imports. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a pre-arranged buyer.

The 2007 Technical Arrangement Concerning Trade in Potatoes between the United States and Canada is designed to provide U.S. potato producers with predictable access to Canadian Ministerial exemptions. The Office of the U.S. Trade Representative and the U.S. Department of Agriculture will continue to engage with U.S. potato growers on any concerns that Canada's procedures for granting ministerial exemptions are not providing access to Canada's market as agreed.

<u>Customs Barriers and Trade Facilitation</u>

Personal Duty Exemption

Canada's personal duty exemption for residents who bring back goods from trips outside of its borders is considerably more limited than the U.S. personal duty exemption. U.S. residents returning from abroad are entitled to an $800 duty-free exemption after 48 hours abroad and $200 for trips under 48 hours. Canadians who spend more than 24 hours outside of Canada can bring back C$200 (approximately $153) worth of goods duty free, or C$800 (approximately $613) for trips over 48 hours. U.S. retailers have raised concerns about the effect of this policy on purchases by Canadians on short trips to the United States.

De Minimis Threshold

De minimis refers to the value of goods below which no duty or tax is charged on shipments from abroad, typically through electronic commerce transactions. Canada's *de minimis* threshold remains at C$20 (approximately $15), which is the lowest among industrialized nations. (By comparison, in March 2016, the United States raised its *de minimis* threshold from $200 to $800.) Stakeholders, particularly shipping companies and online retailers, maintain that Canada's low *de minimis* threshold creates an unnecessary trade barrier.

<u>Wine, Beer, and Spirits</u>

The government of Canada allows residents to import a limited amount of alcohol free of duty and taxes when returning from trips that are at least 48 hours in duration. If the amount exceeds the personal exemption, duties and taxes apply. The taxes vary by province, but generally inhibit Canadians from importing U.S. alcoholic beverages when returning from shorter visits to the United States.

Most Canadian provinces restrict the sale of wine, beer, and spirits through province-run liquor control boards, which are the sole authorized sellers of wine, beer, and spirits in those provinces. Market access barriers imposed by the provincial liquor boards greatly hamper exports of U.S. wine, beer, and spirits to Canada. These barriers include cost-of-service mark-ups, restrictions on listings (products that the liquor board will carry), reference prices (either maximum prices the liquor board is willing to pay, or prices below which imported products may not be sold), label requirements, discounting policies (requirements that suppliers must offer rebates or reduce their prices to meet sales targets), and distribution policies.

British Columbia

In 2015, British Columbia (BC) introduced wine measures that discriminate on their face against imported wine. These measures allow only BC wine to be sold on regular grocery store shelves, while imported wine may be sold in grocery stores only through a so-called "store within a store" option. The United States believes these measures are inconsistent with Canada's obligations pursuant to Article III:4 of the GATT 1994 because they are laws, regulations, or requirements affecting the internal sale, offering for sale, purchase, or distribution of wine and fail to accord products imported into Canada treatment no less favorable than that accorded to like products of Canadian origin. In January and October 2017, the United States requested WTO dispute settlement consultations with Canada regarding measures maintained by BC governing the sale of wine in grocery stores. The WTO Secretariat entitled the dispute *Canada — Measures Governing the Sale of Wine in Grocery Stores* and assigned it the dispute number DS520. At its meeting on July 20, 2018, the WTO Dispute Settlement Body established a panel.

In an exchange of letters signed November 30, 2018, Canada committed to ensure that BC modify its measures and implement any changes no later than November 1, 2019. The United States agreed to take no further action at the WTO prior to November 1, 2019.

Ontario

Under Regulation 232/16, effective December 2016, grocery stores are permitted to sell wine under certain conditions, including conditions related to the size of the winery producing the wine, the size of wineries affiliated with the producing winery, the country where the grapes were grown, and whether the wine meets the definition of a "quality assurance wine." Working with U.S. industry, the United States is analyzing these conditions for sale in grocery stores as well as other developments in Ontario to help ensure U.S. wines are not disadvantaged.

Quebec

Quebec measures may provide an advantage to Quebec small wine producers vis-à-vis imported wines by allowing Quebec small wine producers to bypass the provincial liquor board, Société des alcools du Québec (SAQ), and sell directly to grocery stores, therefore also bypassing the SAQ's mark-ups.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Cheese Compositional Standards

Canada's regulations on compositional standards for cheese limit the amount of dry milk protein concentrate (MPC) that can be used in cheese making, reducing the demand for U.S. dry MPCs. The United States continues to monitor the situation with these regulations for any changes that could have a further adverse impact on U.S. dairy product exports.

Front-of-Package Labeling on Prepackaged Foods

In November 2016, Health Canada requested public and technical comments on its proposal to implement requirements for front-of-package (FOP) labeling on prepackaged foods deemed high in sodium, sugars, and saturated fat, and on updating requirements for other information on the front of food packages including certain claims and labeling of sweeteners. The approach under consideration uses nutrient thresholds to determine whether a food would be required to carry a FOP symbol. The U.S. Government and U.S. industry submitted comments on Canada's pre-consultation. Canada issued proposed regulations on February 10, 2018. The U.S. Government submitted additional comments on the proposed regulations in April 2018. Canada has acknowledged receipt and bilateral discussions continue. The United States acknowledged these responses in November 2018 and suggested that Canada adopt a fact-based approach, based on serving size.

U.S. industry has expressed concerns that an interpretive FOP approach will negatively impact U.S. exports of processed foods and undermine free trade benefits under the NAFTA. The United States permits voluntary FOP labeling that meets the Food and Drug Administration's regulatory requirements, including requirements governing the use of nutrient content claims to help ensure that interpretive terms (e.g., high, low) are used consistently for all types of food products and are not misleading. In 2018, U.S. exports of processed foods to Canada were valued at $12 billion.

Restrictions on U.S. Seeds Exports

For many major field crops, Canada's Seeds Act generally prohibits the sale or advertising for sale in Canada, or import into Canada, of any variety of seeds that is not registered with Canada's Food Inspection Agency (CFIA). Canada's variety registration gives CFIA an oversight role in maintaining and improving quality standards for grains in Canada. It is designed to facilitate and support seed certification and the international trade of seed; verify claims made which contributes to a fair and accurate representation of varieties in the marketplace; and facilitate varietal identity, trait identity and traceability in the marketplace to ensure standards are met. However, there are concerns that the variety registration system is slow, cumbersome and disadvantages U.S. seed and grain exports to Canada. The United States is in discussions with Canada on steps to modernize and streamline Canada's variety registration system.

Corded Window Coverings Regulation

In June 2017, Health Canada published a proposed regulation on corded window coverings, abandoning its existing ANSI-aligned standard. The proposed regulation raises stakeholder concerns, as the Canadian regulation is not based on the relevant international standard. The United States engaged with Canada on the margins of the WTO TBT Committee meeting in November 2018 to request that Canada consider additional engagement with industry to further efforts to harmonize the regulation with international and U.S. standards, and will continue to engage on the matter as appropriate.

SUBSIDIES

Aerospace Sector Support

The Canadian government continues to fund the Strategic Aerospace and Defense Initiative (SADI). The SADI provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defense, space, and security industries, and has authorized C$1.59 billion (approximately $1.22 billion) to fund 33 advanced research and development projects since its establishment in 2007.

The Canadian federal government and the Quebec provincial government announced aid to the Bombardier aircraft company in 2008 to support research and development related to the launch of the new class of Bombardier CSeries commercial aircraft. The federal government provided C$350 million (approximately $275.2 million) in financing for the CSeries aircraft, and the government of Quebec provided another C$117 million (approximately $89.7 million). In October 2015, Bombardier and the Quebec government signed a memorandum of understanding for the province to buy a 49.5 percent equity share in a CSeries joint venture for $1 billion, with a commitment by the company to maintain aircraft manufacturing operations in Quebec for a period of 20 years. Under the agreement, Bombardier received two $500 million payments from the Quebec government, the first on June 30 and the second on September 1, 2016. In February 2017, the government of Canada announced $284 million in additional assistance to Bombardier consisting of a direct $97 million repayable contribution to Bombardier's Montreal-based CSeries program and a $187 million loan to Bombardier's Toronto-based Global 7000 program using Canada's Strategic Aerospace and Defense Initiative, making it one of the largest loans ever made with the SADI program.

In February 2017, Brazil requested consultations in the WTO alleging that Canadian federal and provincial subsidies provided to Bombardier are inconsistent with Canada's international trade obligations. The United States joined the consultations as a third party. The WTO established a panel on September 29, 2017. The proceeding is underway.

On October 16, 2017, Bombardier and Airbus, a European-based multinational aerospace corporation, announced a partnership on the CSeries aircraft program. Under the agreement, Airbus acquired a 50.01

percent interest in the CSeries program, while Bombardier and the Province of Quebec maintain approximately a 31 percent and 19 percent share of the project respectively. Airbus will provide procurement, sales and marketing, and customer support expertise as part of the agreement, and has renamed the CSeries the Airbus A220.

Canada has committed to spend approximately C$25 million (approximately $19.2 million) from 2009 to 2019 to support the Green Aviation Research and Development Network and provide additional funding to the National Research Council's Industrial Research Assistance Program to support research and development in Canada's aerospace sector. Canada's federal government announced in October 2016 that a consortium of companies and academic institutions, led by Bombardier, will receive up to C$54 million (approximately $41.4 million) to develop "the next generation of aircraft technologies."

GOVERNMENT PROCUREMENT

On October 26, 2018, the Government of Canada released a draft Request for Proposal (RFP) for its Future Fighter Capability Project (FFCP). The draft RFP included an Economic Impact Assessment (EIA) as part of its evaluation criteria. The EIA noted that any bidding company involved in a "trade remedy action" against a product manufactured in Canada would have its bid subject to the EIA, which may result in a deduction on the final score of the bid. The move was broadly interpreted as a response to Boeing's 2017 trade remedy action against Canada's Bombardier, and a warning to other companies that might pursue trade remedy actions against Canadian firms. Adoption of the EIA in the final version of the RFP could place U.S. companies at a disadvantage when bidding on future Canadian defense procurement projects. The U.S. Department of Commerce and the U.S. Department of State continue to engage with the government of Canada on this issue.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Canada was downgraded to the Priority Watch List in the Special 301 Report in 2018 for failing to resolve longstanding deficiencies in protection and enforcement of intellectual property (IP). Because shortfalls in protection and enforcement of intellectual property rights (IPR) constitute a barrier to exports and investment, these issues are a continuing priority in bilateral trade relations with Canada. The United States has raised concerns that Canada does not provide customs officials with the ability to detain, seize, and destroy pirated and counterfeit goods that are moving in transit or are transshipped through Canada. The United States also continues to monitor proposed changes to Canada's Patented Medicine Prices Review Board. The United States believes each country should appropriately recognize the value of patented pharmaceutical products and medical devices and urges the government of Canada to work with relevant stakeholders to come up with appropriate solutions that promote access and recognize the value of patented medicines.

The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU, and reiterates the importance of each individual IP right being independently evaluated on its individual merit.

SERVICES BARRIERS

Telecommunications Services

Canada maintains a 46.7 percent limit on foreign ownership of certain existing suppliers of facilities-based telecommunication services (most significantly, incumbent operators with more than 10 percent market share). Despite steps to partially liberalize the market through the 2012 revision to the Telecommunications Act, Canada continues to possess one of the most restrictive telecommunication regimes among developed countries. The cable television industry, a major competitor for Internet access services, was excluded from the 2012 liberalization and remains subject to a 46.7 percent foreign equity cap. In addition to foreign equity restrictions, Canada requires that Canadian citizens comprise at least 80 percent of the membership of boards of directors of facilities-based telecommunication service suppliers.

Canadian Content in Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC) imposes quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian broadcasters must carry (Exhibition Quota). Large English-language private broadcaster groups have a CPE obligation equal to 30 percent of the group's gross revenues from their conventional signals, specialty, and pay services.

In March 2015, the CRTC eliminated the overall 55 percent daytime Canadian-content quota. Nonetheless, CRTC maintained the Exhibition Quota for primetime at 50 percent from 6 p.m. to 11 p.m. Specialty services and pay television services that are not part of a large English-language private broadcasting group are now subject to a 35 percent requirement throughout the day, with no prime time quota.

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian channels. Non-Canadian channels must be pre-approved ("listed") by the CRTC. Upon an appeal from a Canadian licensee, the CRTC may determine that a non-Canadian channel competes with a Canadian pay or specialty service, in which case the CRTC may either remove the non-Canadian channel from the list (thereby revoking approval to supply the service) or shift the channel into a less competitive location on the channel dial. Alternatively, non-Canadian channels can become Canadian by ceding majority equity control to a Canadian partner, as some U.S. channels have done. This policy is ostensibly designed to promote Canadian culture.

The CRTC also requires that 35 percent of popular musical selections broadcast on the radio qualify as "Canadian" under a Canadian government-determined point system.

In September 2015, the CRTC released a Wholesale Code that governs certain commercial arrangements between distributors (*e.g.* cable companies) and programmers (*e.g.* channel owners). The Wholesale Code came into force January 22, 2016. The code is binding for vertically-integrated suppliers in Canada (*i.e.*, suppliers that own infrastructure and programming) and applies as guidelines to foreign programming suppliers (who by definition cannot be vertically integrated, as foreign suppliers are prohibited from owning video distribution infrastructure in Canada). The CRTC closely monitors negotiations with foreign suppliers and can take actions if the guidelines are not followed.

On August 19, 2016, the CRTC issued a formal rule preventing simultaneous substitution during the Super Bowl by Bell Canada, which has exclusive rights to air the program in Canada. The rule came into force January 1, 2017. Simultaneous substitution is a process by which broadcasters can insert local advertising into a program, overriding the original U.S. advertising and providing the Canadian broadcaster an independent source of revenue. U.S. suppliers of programming also raised concerns about a CRTC policy not to permit simultaneous substitution of advertising for the Super Bowl, beginning in the 2016-2017 season. U.S. suppliers of programming believe that the CRTC's policy reduces the value of Super Bowl programming rights in Canada because the price Canadian networks pay for the rights is determined by the value of advertising they can sell domestically. Consequently, U.S. programming suppliers are very concerned about this policy. Bell Canada and the National Football League challenged the CRTC rule in the Canadian Federal Court of Appeals, but their claim was dismissed in December 2017. The Supreme Court of Canada agreed to hear appeals by Bell Canada and the National Football League. Proceedings began December 4, 2018.

U.S. broadcasters have also complained about Canadian cable and satellite suppliers picking up the signals of U.S. stations near the border and redistributing them throughout Canada without the U.S. broadcasters' consent. Content owners (including broadcasters who develop their own programming) can apply for compensation for the use of such content in Canada from a statutorily mandated fund into which Canadian cable and satellite suppliers pay. However, U.S. broadcasters consider this compensation, which was recently reduced, to be insufficient, and have sought the right to negotiate the carriage of their signals on commercially set rates and terms, as can be done in the United States. The United States will continue to explore avenues to address these concerns.

Financial Services

By law, Canada requires financial institutions in Canada to replicate and maintain in Canada any data related to the Canadian operations of the financial institution that is transferred outside of Canada. The United States is urging that Canada withdraw these requirements as regulators can have immediate and direct access to data for regulatory purposes regardless of where data is stored.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Digital Media

On September 28, 2017, the government launched its Creative Canada initiative, which provides a policy framework to expand Canada's creative industries. Creative Canada's policy framework states that the government "will seek commitments from, and pursue agreements with global Internet companies that provide services to Canadians" to ensure they contribute to Canadian programming and the development of Canadian talent with investments in production and distribution. As part of the initiative, the Canadian government announced C$125 million (roughly $95 million) over five years to implement its Creative Export Strategy in June 2018. The Strategy aims to bolster Canada's creative industries by strengthening Canada's presence in international markets and equipping Canada's exporters with new tools to export their projects. The United States will closely monitor the Creative Canada initiative to ensure it is implemented in a manner that does not constitute a barrier to digital trade.

INVESTMENT BARRIERS

The Investment Canada Act (ICA) has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business. Innovation, Science and Economic Development (ISED) *Canada* is the government's reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage Canada. Investors with investments below certain thresholds are able to implement their investments and report them up to 30 days afterward. Investments above those thresholds must wait for affirmative approval before implementation.

On June 22, 2017, a provision entered into force to increase the threshold for pre-implementation review to C$1 billion (approximately $766.5 million) from C$600 million (approximately $459.9 million) for investors that are from countries that are Members of the World Trade Organization and that are not state-owned enterprises (SOEs). Subsequently, on September 21, 2017, the threshold for review was increased to C$1.5 billion (approximately $1.15 billion) for investors that are not SOEs from countries that are party to certain designated trade agreements with Canada, including the NAFTA.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was $4.0 billion in 2018, a 30.1 percent increase ($919 million) over 2017. U.S. goods exports to Chile were $15.3 billion, up 12.8 percent ($1.7 billion) from the previous year. Corresponding U.S. imports from Chile were $11.4 billion, up 7.7 percent. Chile was the United States' 20th largest goods export market in 2018.

U.S. exports of services to Chile were an estimated $4.6 billion in 2017 (latest data available) and U.S. imports were $1.8 billion. Sales of services in Chile by majority U.S.-owned affiliates were $10.4 billion in 2016 (latest data available), while sales of services in the United States by majority Chile-owned firms were $433 million.

U.S. foreign direct investment (FDI) in Chile (stock) was $25.9 billion in 2017 (latest data available), a 10.6 percent decrease from 2016. U.S. direct investment in Chile is led by manufacturing, finance/insurance, and nonbank holding companies.

TRADE AGREEMENTS

United States-Chile Free Trade Agreement

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004.

Pursuant to the FTA, Chile immediately eliminated tariffs on over 85 percent of qualifying U.S. goods. Since January 1, 2015, all originating U.S. goods enter Chile duty free. Chile also implemented new laws and regulations to ensure additional access for U.S. companies to its government procurement, services, telecommunications, and electronic commerce markets, and made commitments with respect to regulatory transparency, customs procedures, and enforcement of environmental protection laws. The liberalization of the Chilean goods and services markets has supported increased U.S. exports to Chile. However, the United States continues to have significant concerns with Chile’s failure to implement fully some FTA commitments on protection and enforcement of intellectual property rights.

The FTA established a Free Trade Commission (FTC), which meets regularly to review the functioning of the Agreement and address outstanding issues. The United States has worked effectively with Chile to address some U.S. priority issues, including labor protection, trade in table grapes, beef grade labeling, and environmental protection for endangered species.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Chile’s bound WTO tariff rate averaged 25.2 percent in 2017 (latest data available), and its Most Favored Nation (MFN) applied tariff rate averaged 6 percent. Apart from a price-band system for some agricultural products, which is not applied to products originating in the United States pursuant to the bilateral FTA, Chile effectively applies only two tariff rates to imported goods: zero percent or six percent. Chile has placed heavy emphasis on an open-trade strategy and has one of the largest numbers of preferential trade agreements with the greatest number of trading partners of any WTO Member.

As noted above, pursuant to the FTA, as of January 1, 2015, all originating U.S. goods enter Chile duty-free.

Taxes

Importers must pay a 19 percent value-added tax (VAT) calculated based on the cost, insurance, freight (CIF) value of the import. The VAT is also applied to nearly all domestically produced goods and services. Certain products (regardless of origin) are subject to additional taxes. There is an 18 percent tax on sugared non-alcoholic beverages, a 20 percent tax on beers and wines, and a 31.5 percent tax on distilled alcoholic beverages. Cigarettes are subject to a 30 percent *ad valorem* tax plus approximately $0.07 per cigarette; other tobacco products have taxes between 52.6 percent and 59.7 percent. Luxury goods, defined as jewelry and natural or synthetic precious stones, fine furs, fine carpets or similar articles, mobile home trailers, caviar conserves and their derivatives, and air or gas arms and their accessories (except for underwater hunting), are subject to a 15 percent tax. Electric and high-value vehicles are also defined as luxury goods, but U.S.-made vehicles are exempted from the tax under terms of U.S-Chile FTA. Pyrotechnic articles, such as fireworks, petards, and similar items (except for industrial, mining, or agricultural use), are subject to a 50 percent tax.

Foreign shareholders must pay a 35 percent tax on net capital gains that are recognized in connection with the sale or other transfer of Chilean shares on or after January 1, 2017. This tax applies to capital gains from the sale of shares in Chilean companies, regardless of their participation in the stock exchange (*Bolsa de Comercio*). Such capital gains were previously subject to tax at a rate of 20 or 35 percent, depending on certain requirements.

Under the treaty between the United States and Chile for the avoidance of double taxation – which was signed in 2010 and ratified by Chile in 2014, but has not been ratified by the U.S. Congress – certain companies would be exempt from the 35 percent tax. The tax treaty would also reduce withholding tax rates on royalties, dividends, interest payments, and capital gains. Further, the treaty would exempt U.S. engineering, financial services, and other service companies from a 35 percent withholding tax, and U.S.-headquartered banks and insurance companies would be subject to a reduced 4 percent withholding tax rate on interest earned in Chile.

Nontariff Barriers

There are virtually no restrictions on the types or amounts of goods that can be imported into Chile, nor are there any requirements to use the official foreign exchange market. However, importers and exporters must report their import and export transactions to the Central Bank. Commercial banks may sell foreign currency to any importer to cover the price of imported goods and related expenses as well as to pay interest and other financing expenses that are authorized in the import report.

Chile's licensing requirements appear to be used primarily for statistical purposes; legislation requires that most import licenses be granted as a routine procedure. However, Chile applies more rigorous licensing procedures for certain products, such as pharmaceuticals and weapons.

Companies are required to contract the services of a customs broker when importing or exporting goods valued at over $1,000 free on board (FOB). Companies established in any of Chile's free trade zones are exempt from the obligation to use a customs broker when importing or exporting goods. Noncommercial shipments valued at less than $500 are also exempt.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANTIARY BARRIERS

Technical Barriers to Trade

Nutritional Labeling

In June 2016, the government of Chile implemented the Law on Food Nutritional Composition and its Advertising (known as Decree 13, and originally published in June 2012). The law imposes marketing and advertising restrictions and requires warning labels on prepackaged food and beverage products that exceed one or more specified thresholds set by Chile for sodium, sugar, energy (calories), and saturated fats. For each threshold exceeded, food and beverage products must bear a black "stop sign" shaped warning label with the words "high in" salt, sugar, energy, or saturated fat on the front of the product package. Fresh or unpackaged (bulk) food and beverage products are exempt from these requirements. The nutrient content limits are based on a 100-gram or 100-milliliter serving rather than the actual serving size most likely to be consumed in a single serving. Nearly 70 percent of U.S. high-value, consumer-oriented food product exports to Chile surpass one or more of the nutrient content limits and therefore are subject to marketing and advertising restrictions and require one or more of the front-of-package warning labels.

Additionally, the law prohibits the use of images deemed to constitute "advertising to children" under the age of 14 for any product that exceeds any of the nutritional thresholds. Implementation of Decree 13, particularly with regard to whether registered trademarks constitute advertising on product packaging, has been inconsistent. Despite initial assurances that registered trademarks would not be affected, Chile's Ministry of Health (MINSAL) has restricted certain foreign products from entering the Chilean market on the basis that images on product packaging, including registered trademarks, fell within the scope of the Decree and constituted advertising to children. Enforcement of Decree 13 has resulted in delays, shortages, and repackaging that cost U.S. firms millions of dollars in lost sales and additional expenses.

The United States has raised concerns regarding Decree 13 with Chile under the U.S.-Chile Free Trade Agreement's Free Trade Commission, and other fora. The United States will continue to request from Chile a scientific justification for the measure.

Cell Phone Labeling and Emergency Warning Alerts

In June 2016, Chile's Ministry of Transportation and Telecommunications (SUBTEL) issued Resolution No. 1463, which established requirements for cellphone labeling. This measure entered into force on September 23, 2017. Per SUBTEL's "Manual of Graphic Standards: Broadband Label" issued pursuant Resolution No. 1463, labels are required to indicate whether cellphones or mobile devices are suitable for 2G, 3G, or 4G. Resolution No. 271, issued on March 2, 2017, clarified that the label must be applied to all device boxes before the point of sale, and that it was the responsibility of the party commercializing the device to ensure that the labels are applied.

For 4G phone certifications, the device must support the bands 700 MHz, 2600 MHz, and Advanced Wireless Services (AWS). In Chile, some mobile phone companies currently pay an extra fee to unlock the AWS band. Thus, if a device has 4G capability, but the company has not paid to make the AWS band accessible, the phone will be labeled instead as 2G or 3G. SUBTEL has outlined a testing procedure to ensure compliance with Resolution No. 1463, which involves local testing done by an accredited local certification body, a list of which is published on SUBTEL's webpage. Stakeholders are concerned that these labelling requirements may be unduly broad and costly to implement.

In June 2016, SUBTEL issued External Resolution No. 1474, which calls for a mandatory and universal emergency alert (vibration) to be included in all cellphones or mobile devices. The Resolution entered into force on September 23, 2017. SUBTEL has further clarified technical guidelines, a transition plan, and noted that the same local certifying bodies as those assigned to test compliance with requirements for No. Resolution 1463 will also test for compatibility with Chile's emergency alert system. Again, concerns exist that this measure appears to be unique to the Chilean market and is more onerous than necessary, particularly with respect to duplicative testing and certification requirements.

The United States asked for an update on this measure most recently at the U.S.-Chile Free Trade Commission TBT Chapter meeting in September 2018.

Sanitary and Phytosanitary Barriers

Salmonid Products Ban

Since July 2010, Chile's Ministry of Fisheries (SERNAPESCA) has suspended imports of salmonid species, including salmonid eggs, from all countries, pursuant to Chile's revised import regulations for aquatic animals. The United States continues to work with Chile to develop a protocol to allow for safe U.S. exports of salmonid eggs.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Chile remained on the Priority Watch List in the 2018 Special 301 Report. The United States remains concerned about the adequacy and effectiveness of the protection and enforcement of intellectual property (IP) rights under Chile's system. In 2018, Chile took a step forward by passing a new law, in force since November 2018, providing for protection and enforcement against certain aspects of piracy that occurs through satellite signal theft. The law establishes penalties for the importation, commercialization, and distribution of illegal decoding devices used to steal encrypted program-carrying signals.

However, longstanding concerns remain in relation to the lack of effective remedies to address the unlawful circumvention of technological protection measures, failure to ratify the (1991) Act of the International Convention for the Protection of New Varieties of Plants (UPOV '91), and an ineffective Internet Service Provider liability regime, which has failed to promote effective and expeditious action against online piracy. The United States also has urged Chile to address concerns about pharmaceutical related intellectual property, including gaps in its existing mechanism for early resolution of patent disputes (called "patent linkage"), as well as the need for adequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval. In addition, the United States is monitoring administrative actions and proposed legislation in Chile that may weaken exclusive patent rights for pharmaceutical products. The U.S. government remains committed to engaging with Chile on this issue.

The United States will continue to work bilaterally with Chile to address these and other IP issues.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Digital Services Tax

Under Chile's draft tax modernization legislation (N° 107-366), the Chilean congress is considering a 10 percent tax on revenues of foreign suppliers' providing certain digital services (digital content providers, data storage services, and paid services for advertising abroad) to Chilean residents. The tax would be imposed on any non-Chilean domiciled or non-Chilean resident entity, irrespective of whether the entity has a permanent establishment in Chile. Foreign suppliers of digital services are not currently subject to the VAT in Chile. However, the proposed tax on digital services is not the equivalent of subjecting foreign suppliers to the VAT. Rather, it imposes an entirely new tax solely on foreign suppliers in the market. The

United States opposes proposals by any country to single out and disadvantage digital companies. Such proposals are based on an unsupported distinction between digital companies and non-digital companies. The United States will continue to monitor and engage with the government of Chile on this proposed legislation in 2019.

OTHER BARRIERS

Export Policies

Chile currently provides a simplified duty drawback program for nontraditional exports (except in cases where a free trade agreement provides otherwise). The program reimburses a firm up to 3 percent of the value of the exported good if at least 50 percent of that good consists of imported raw materials. Chile publishes an annual list of products excluded from this policy. In accordance with its commitments under the FTA, as of January 1, 2015, Chile eliminated the use of duty drawback and duty deferral for imports that are incorporated into any good exported to the United States.

Under Chile's VAT reimbursement policy, which is different from its drawback program, exporters have the right to recoup the VAT paid on goods and services intended for export activities. Any company that invests in a project in which production will be for export is eligible for VAT reimbursement. Exporters of services can only benefit from the VAT reimbursement policy if the services are rendered to people or companies with no Chilean residency. In addition, the service must qualify as an export through a resolution issued by the Chilean customs authority.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $419.2 billion in 2018, a 11.6 percent increase ($43.6 billion) over 2017. U.S. goods exports to China were $120.3 billion, down 7.4 percent ($9.6 billion) from the previous year. Corresponding U.S. imports from China were $539.5 billion, up 6.7 percent. China was the United States' 3rd largest goods export market in 2018.

U.S. exports of services to China were an estimated $57.6 billion in 2017 (latest data available) and U.S. imports were $17.4 billion. Sales of services in China by majority U.S.-owned affiliates were $55.1 billion in 2016 (latest data available), while sales of services in the United States by majority China-owned firms were $8.3 billion.

U.S. foreign direct investment (FDI) in China (stock) was $107.6 billion in 2017 (latest data available), a 10.6 percent increase from 2016. U.S. direct investment in China is led by manufacturing, wholesale trade, and finance/insurance.

KEY TRADE BARRIERS

The United States continues to pursue vigorous engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers and consumers derive from trade and economic ties with China. At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders. The key concerns in each of these areas are summarized below. For more detailed information on these concerns, see the 2018 USTR Report to Congress on China's WTO Compliance, issued on February 4, 2019, Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974, issued on March 22, 2018, and Update Concerning China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation, issued on November 20, 2018.

INDUSTRIAL POLICIES

Overview

China continued to pursue a wide array of industrial policies in 2018 that seek to limit market access for imported goods, foreign manufacturers and foreign services suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The beneficiaries of these constantly evolving policies are not only state-owned enterprises but also other Chinese companies attempting to move up the economic value chain.

Tariffs

According to the WTO, China's Most Favored Nation (MFN) applied tariff rate averaged 9.8 percent in 2017 (latest data available). The MFN applied rate for agricultural goods averaged 15.6 percent, and the MFN applied rate for non-agricultural goods averaged 8.8 percent. China has bound 100 percent of its tariff lines in the WTO, and its highest WTO bound tariff rate is 65 percent for certain agricultural goods.

In April 2018, China imposed tariffs ranging from 15 percent to 25 percent on a range of agricultural, steel and aluminum products imported from the United States in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. As noted below, the President's decision was based on a determination that the quantity and circumstances of U.S. imports of steel and aluminum products – including the circumstances of severe excess capacity and resulting overproduction emanating from China – threaten to impair U.S. national security. The United States continues to press China to address the root causes of the excess capacity crisis in these industries, rather than engage in unjustified retaliation designed to punish American farmers, workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, in July 2018, the United States launched a dispute settlement proceeding against China in the WTO pertaining to China's retaliatory tariffs.

In 2018, China imposed a series of retaliatory tariffs following U.S. action under Section 301. Specifically, in July and August 2018, China imposed tariffs of 25 percent on $34 billion and $16 billion in U.S. imports, respectively, and in September 2018, China imposed 5 percent to 10 percent tariffs on $60 billion in U.S. imports.

Separately, in 2018, China announced a series of MFN tariff reductions. According to China's Ministry of Finance, these steps reduced China's average tariff rate from 9.8 percent to 7.8 percent by the end of 2018.

China also applies value-added taxes (VATs) of 10 or 16 percent to imported goods. However, VATs may be rebated for exports to support domestic industries and policies.

Technology Transfer

At the beginning of 2017, longstanding and serious U.S. concerns regarding technology transfer remained unaddressed despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. At the same time, new concerns continued to emerge. In August 2017, USTR initiated an investigation under Section 301 of the Trade Act of 1974, as amended, focused on policies and practices of the government of China related to technology transfer, intellectual property and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese government conduct that would be the subject of its inquiry, including but not limited to: 1) the use of a variety of tools to require or pressure U.S. companies to transfer technologies and intellectual property to Chinese companies; 2) depriving U.S. companies of the ability to set market-based terms in licensing intellectual property to Chinese companies; 3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and 4) conducting or supporting intrusions into U.S. commercial computer networks or cyber-enabled theft for commercial gain. In March 2018, USTR issued a report finding that the four categories of acts, policies and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. On the basis of USTR's investigation, the United States has imposed additional tariffs on $250 billion worth of Chinese imports.

Made in China 2025 Industrial Plan

In May 2015, China's State Council released Made in China 2025, a 10-year plan spearheaded by the Ministry of Industry and Information Technology (MIIT) and targeting 10 strategic advanced manufacturing sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, energy-saving and new energy vehicles (NEVs), power equipment, agricultural machinery, new materials, biotechnology (including biopharmaceuticals), and advanced medical device products. While ostensibly intended simply to raise industrial productivity through more advanced and flexible manufacturing techniques, Made in China 2025 is emblematic of China's evolving and increasingly sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Their common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to equip Chinese companies to dominate international markets.

Made in China 2025 seeks to build up Chinese companies in the 10 targeted, strategic sectors at the expense of, and to the detriment of, foreign industries and their technologies through a multi-step process over 10 years. The initial goal of Made in China 2025 is to ensure, through various means, that Chinese companies develop, extract or acquire their own technology, intellectual property and know-how and their own brands. The next goal of Made in China 2025 is to substitute domestic technologies, products and services for foreign technologies, products and services in the China market. The final goal of Made in China 2025 is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

Many of the policy tools being used by the Chinese government to achieve the goals of Made in China 2025 raise serious concerns. These tools are largely unprecedented and include a wide array of state intervention and support designed to promote the development of Chinese industry in large part by restricting, taking advantage of, discriminating against or otherwise creating disadvantages for foreign enterprises and their technologies, products and services. Indeed, even facially neutral measures can be applied in favor of domestic enterprises, as past experience has shown, especially at sub-central levels of government.

Made in China 2025 also differs from industry support pursued by other WTO Members by its level of ambition and, perhaps more importantly, by the scale of resources the government is investing in the pursuit of its industrial policy goals. Indeed, by some estimates, the Chinese government is making available more than $500 billion of financial support to the Made in China 2025 sectors, both through the Made in China 2025 industrial plan and related industrial plans. Even if China fails to achieve fully the industrial policy goals set forth in Made in China 2025, it is still likely to create or exacerbate market distortions and create severe excess capacity in many of the targeted sectors as well as do long-lasting damage to U.S. interests, as China-backed companies increase their market share at the expense of U.S. companies operating in these sectors.

USTR's Section 301 investigation and resulting tariff and other actions seek to address China's forced technology transfer regime. This regime is one of the instruments through which China intends to meet its Made in China 2025 targets.

Indigenous Innovation

Policies aimed at promoting "indigenous innovation" continue to represent an important component of China's industrialization efforts. Through intensive, high-level bilateral engagement with China since 2010, the United States has attempted to address these policies, which provide various preferences when intellectual property is owned or developed in China, both broadly across sectors of China's economy and specifically in the government procurement context.

For example, at the May 2012 U.S.-China Strategic and Economic Dialogue (S&ED) meeting, China committed to treat intellectual property owned or developed in other countries the same as intellectual property owned or developed in China. The United States also used the 2012 U.S.-China Joint Commission on Commerce and Trade (JCCT) process to press China to revise or eliminate specific measures that appeared to be inconsistent with this commitment. Throughout 2013 and 2014, the United States and China intensified their discussions. At the December 2014 JCCT meeting, China clarified and underscored that it will treat intellectual property owned or developed in other countries the same as domestically owned or developed intellectual property. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of intellectual property in China.

The United States secured a series of similar commitments from China in the government procurement context, where China agreed to de-link indigenous innovation policies at all levels of the Chinese government from government procurement preferences, including through the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Many years later, however, this promise had not been fulfilled. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of scores of inconsistent measures, China announced that its State Council had issued a document requiring all agencies and all sub-central governments to "further clean up related measures linking indigenous innovation policy to the provision of government procurement preference." Despite these promises, the underlying thrust of China's indigenous innovation policies remains unchanged.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in key services sectors, agriculture, extractive industries, and certain manufacturing sectors. Many aspects of China's current investment regime continue to cause foreign investors great concern, including a lack of substantial liberalization, evidenced by the continued application of foreign equity caps and joint venture requirements, the maintenance of a case-by-case administrative approval system for a broad range of investments, the evolving potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's Cybersecurity Law and related implementing measures, including ones that restrict cross-border data flows and impose data localization requirements.

In addition, foreign enterprises report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise transfer technology, conduct research and development in China, satisfy exporter local content requirements or make valuable, deal-specific commercial concessions. The United States has repeatedly raised concerns with China about its restrictive investment regime. To date, this sustained bilateral engagement has not led to a significant relaxation of China's investment restrictions, nor has it appeared to curtail ad hoc actions by Chinese government officials. Shortly after President Trump's visit to Beijing in November 2017, China did announce that it would be relaxing certain restrictions on foreign investment in banking services, life insurance services, and securities and asset management services in the future, and China took some steps in that direction in 2018, although many significant barriers remain in these sectors.

Given that China's investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they have been a focus of USTR's Section 301 investigation. The responsive actions taken by the United States are intended in part to address this concern.

Secure and Controllable Information and Communications Technology Policies

In 2018, China continued to issue measures intended to implement the Cybersecurity Law adopted in November 2016, and global concerns regarding China's invocation of national security as a basis for these measures increased. As demonstrated in the implementing measures, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign information and communications technology (ICT) products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign ICT products and services with domestic ones. Stakeholders and governments around the world expressed serious concerns about requirements that ICT equipment and other ICT products and services in critical sectors be "secure and controllable," as these requirements are used by the Chinese government to disadvantage non-Chinese firms in multiple ways.

Separate from the Cybersecurity Law, China has referenced its "secure and controllable" requirements in a variety of measures dating back to 2013. Through these measures, China has mandated that Chinese information technology users purchase Chinese products and favor Chinese service suppliers, has imposed local content requirements, has imposed domestic research and development (R&D) requirements, has considered the location of R&D as a cybersecurity risk factor and has required the transfer or disclosure of source code or other intellectual property.

In addition, in 2015, China enacted a National Security Law and a Counterterrorism Law, which include provisions citing not only national security and counterterrorism objectives but also economic and industrial policies. The State Council also published a plan in 2015 that sets a timetable for adopting "secure and controllable" products and services in critical government ministries by 2020.

Meanwhile, sector-specific policies under this broad framework continue to be proposed and deployed across China's economy. A high profile example from December 2014 was a proposed measure drafted by the China Banking Regulatory Commission (CBRC) that called for 75 percent of ICT products used in the banking system to be "secure and controllable" by 2019 and that would have imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Not long afterwards, a similar measure was proposed for the insurance sector.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns about China's "secure and controllable" regime at the highest levels of government within China. During the state visit of President Xi in September 2015, the U.S. and Chinese Presidents committed to a set of principles for trade in information technologies. The issue also was raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy. China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its "secure and controllable" policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality-based conditions and restrictions on commercial ICT purchases, sales or uses. China also agreed that it would notify relevant technical regulations to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Again, however, it appears that China intends to act in ways that are contrary to its promises. The numerous draft and final cybersecurity implementation measures issued by China in 2017 and 2018 raise serious questions about China's approach to cybersecurity regulation. China's measures do not align with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States has conveyed its serious concerns about China's approach to cybersecurity regulation through written comments on draft measures, bilateral engagement and multilateral engagement at WTO committee and council meetings in an effort to persuade China to revise its policies in this area to ensure that they are consistent with its WTO obligations and bilateral commitments. These efforts are ongoing.

Encryption

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. Such functionality is particularly important in China, given the high incidence of cyber theft in this market. Onerous requirements on the use of encryption, including intrusive approval processes and, in many cases, mandatory use of indigenous encryption algorithms (*e.g.*, for WiFi and 4G cellular products), continue to be cited by stakeholders as a significant trade barrier. The United States, together with other trading partners, have raised their concerns about this matter in several WTO committee meetings. The United States will continue to monitor implementation of existing rules and will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

Subsidies

China continues to provide substantial subsidies to its domestic industries, which has caused injury to U.S. industries. Some of these subsidies also appear to be prohibited under WTO rules. To date, the United States has been able to address some of these subsidies through countervailing duty proceedings conducted by the Commerce Department and dispute settlement cases at the WTO. The United States and other WTO members also have continued to press China to notify all of its subsidies to the WTO in accordance with its WTO obligations while also submitting counter notifications listing hundreds of subsidy programs that China has failed to notify. Since joining the WTO 17 years ago, China has not yet submitted to the WTO a complete notification of subsidies maintained by the central government, and it did not notify a single sub-central government subsidy until July 2016, when it provided information largely only on sub-central government subsidies that the United States had challenged as prohibited subsidies in a WTO case.

Together with the European Union (EU), the United States is defending the ability to apply non-market economy methodologies to China in order to counter the effects of China's trade distortive policies and practices. The United States also is working with the EU and Japan to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations.

Excess Capacity

Because of its state-led approach to the economy, China is the world's leading offender in creating non-economic capacity, as evidenced by the severe and persistent excess capacity situations in several industries. China also is well on its way to creating severe excess capacity in other industries through its pursuit of industrial plans such as Made in China 2025, pursuant to which the Chinese government is doling out hundreds of billions of dollars to support Chinese companies and requiring them to achieve preset targets for domestic market share – at the expense of imports – and global market share in each of 10 advanced manufacturing industries.

In manufacturing industries like steel and aluminum in particular, China's economic planners and their government actions and financial support have contributed to massive excess capacity in China, with the resulting over-production distorting global markets and hurting U.S. producers and workers in both the United States and third country markets, where U.S. exports compete with Chinese exports. While China has publicly acknowledged excess capacity in these industries, among others, it has yet to take meaningful steps to address the root causes of the problem in a sustainable way.

From 2000 to 2016, China accounted for 75 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and twice the combined steelmaking capacity of the EU, Japan, the United States and Russia. Meanwhile, China's steel exports grew to be the largest in the world, at 91 million metric tons (MT) in 2014, a 50 percent increase over 2013 levels, despite sluggish steel demand abroad. In 2015, Chinese exports reached a historic high of 110 million MT, causing increased concerns about the detrimental effects that these exports would have on the already saturated world market for steel. China's steel exports continued to grow in the first half of 2016 before beginning to decline in the second half of the year, a trend that continued into 2017 and 2018. However, China produced more steel in 2018 than in any other previous year.

Similarly, primary aluminum production capacity in China increased by more than 50 percent between 2011 and 2015, despite a severe drop in global aluminum prices during that period. China's capacity has continued to grow in subsequent years. Large new facilities have been built with government support, and China's primary aluminum capacity now accounts for more than one-half of global capacity. As a consequence, China's capacity and production have contributed to imbalances and price distortions in global markets, harming U.S. plants and workers.

Excess capacity in China – whether in the steel industry or other industries such as aluminum – hurts U.S. industries and workers not only because of direct exports from China to the United States, but also because its impact on global prices and supply make it difficult for even the most competitive producers to remain viable. Domestic industries in many of China's trading partners continued to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the President has taken action under Section 232 of the Trade Expansion Act of 1962 to adjust imports of steel and aluminum products after finding that the quantity and circumstances of imports of these products (including the circumstances of excess capacity) threaten to impair U.S. national security.

Export Restraints

China continues to deploy a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. Through these export restraints, it appears that China is able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies and jobs to China.

In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum, and chemicals industries after the United States won a dispute settlement case against China at the WTO. In 2014, the United States won a second WTO case, focusing on China's export restraints on rare earths, tungsten, and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China removed those export restraints in May 2015. In July 2016, the United States launched a third WTO case challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum, and tin. These raw materials are key inputs in important U.S. manufacturing industries, including the aerospace, automotive, construction, and electronics industries. China appears to have removed the challenged export restraints, as the United States continues to monitor the situation. It is deeply concerning that the United States has been forced to bring multiple cases to address the same obvious WTO violations.

Value-added Tax Rebates and Related Policies

As in prior years, in 2018, the Chinese government attempted to manage the export of many primary, intermediate and downstream products by raising or lowering the value-added tax (VAT) rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum and soda ash industries. These practices, together with other policies, such as excessive government subsidization, also have contributed to severe excess capacity in these same industries. An apparently positive development took place at the July 2014 S&ED meeting when China committed to improve its VAT rebate system, including by actively studying international best practices, and committed to deepening communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. To date, China has not made any movement toward the adoption of international best practices.

Import Ban on Remanufactured Products

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining, agriculture, healthcare, transportation, and communications, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

Import Ban on Recyclable Materials

In 2017 and 2018, China issued several measures that would limit or ban imports of numerous scrap and recovered materials, such as certain types of plastic, paper, and metals. Similar restrictions do not appear to apply to domestically sourced scrap and recovered materials. The United States, together with other trading partners, have raised their concerns about this matter in several WTO committee meetings.

Standards

Currently, China is in the early stages of implementing a large-scale reform of its standards system. As part of this reform, China is seeking to incorporate a "bottom up" strategy in standards development in addition to the existing "top down" system. In September 2017, China published a revised draft version of a new Standardization Law on which the United States submitted written comments. This draft of the law introduced a serious new concern with regard to preferences for Chinese technologies in standards development and failed to address other concerns detailed in U.S. written comments on the previous draft. The September 2017 draft, with only minor revisions, became final in November 2017 and went into effect in January 2018. At the same time, existing technical committees continue to develop standards, and more foreign participation in some cases is being allowed. For example, while the United States' substantive concerns with China's cybersecurity standards have not been addressed, the technical committee for cybersecurity standards has begun allowing foreign companies to participate in some standards development and setting, with a few U.S. and other foreign companies being allowed to vote and to participate at the working group level in standards development. However, foreign companies' ability to participate in technical committee activities remains restricted. The United States remains very concerned about China's policies with regard to standards, as China prepares to develop implementing regulations for the Standardization Law.

In recent years, foreign firms continue to be concerned about their ability to influence domestic standards setting processes. This is particularly concerning because the processes for recommendatory, enterprise and association standards remain unclear. In addition, Chinese government officials in some cases reportedly have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. China also has continued to pursue unique national standards in a number of high technology areas where international standards already exist. The United States continues to press China to address these specific concerns, but to date this bilateral engagement has yielded minimal progress.

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims to serve the interests of Chinese companies seeking to compete globally, as the Chinese government's vision is to use the power of the large Chinese market to promote or compel the adoption of Chinese standards in global markets.

Cosmetics

China imposes discriminatory testing and documentation requirements for imported cosmetics and personal care products. Its cosmetics regulations also do not recognize international standards for good manufacturing practices (GMP) and product safety assessment.

For example, imported cosmetics are required to undergo safety testing in-country, which can include testing on animals. Once this safety testing is successfully completed, the foreign manufacturer (through a Chinese agent) can apply for the necessary license from China's regulatory authorities. In contrast, since December 2013, domestic cosmetics manufacturers have benefitted from a streamlined approach, as they only need to notify their products and self-certify good manufacturing and product safety. As a result, domestic manufacturers have a shorter time to market and are shielded from concerns of Chinese and international consumers who increasingly oppose products tested on animals. Animal testing poses a brand risk and a market access risk, as the EU, South Korea, India and other countries have banned animal testing. In addition, China's testing requirements can be prohibitively expensive for foreign manufacturers and are often duplicative, further slowing market access for imported cosmetics. In 2014, China announced that it would seek to align its regulatory regime with international standards for GMP and product safety assessment through a new regulation being drafted, the Cosmetics Supervision and Administration Regulation (CSAR). However, the most recent draft notified to the WTO TBT Committee would continue China's disparate testing requirements for imported products, including local and animal testing.

In December 2013, China introduced a requirement that importers submit a certificate of free sale (CFS) establishing that an imported product is sold in the country of origin. As many cosmetics products are designed for specific destination markets, this CFS requirement adversely impacts the ability of foreign manufacturers to develop innovative products catering to China's $50 billion cosmetics market.

GOVERNMENT PROCUREMENT

China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA Parties. To date, however, the United States, the EU, and other GPA Parties have viewed China's offers as highly disappointing in scope and coverage. China submitted its fifth revised offer in December 2014. This offer showed progress in a number of areas, including thresholds, entity coverage, and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA Parties, as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, services coverage, and exclusions.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission (NDRC) and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity that conducts the procurement. Both laws cover important procurements that GPA Parties would consider to be government procurement eligible for coverage under the GPA.

TRADE REMEDIES

China's regulatory authorities in some instances seem to be pursuing antidumping and countervailing duty investigations and imposing duties – even when necessary legal and factual support for the duties is absent – for the purpose of striking back at trading partners that have exercised their WTO rights against China. To date, the U.S. response has been the filing and prosecution of three WTO disputes. The decisions reached by the WTO in those three disputes confirm that China failed to abide by WTO disciplines when imposing the duties at issue.

INTELLECTUAL PROPERTY RIGHTS

Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Currently, China is in the midst of an extended round of revisions to these laws and regulations. Despite various plans and directives issued or presided over by the State Council, inadequacies in China's intellectual property rights (IPR) protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, China was again placed on the Priority Watch List in USTR's 2018 Special 301 report. In addition, in January 2018, USTR announced the results of its 2017 Out-of-Cycle Review of Notorious Markets, which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting. Several Chinese markets were among those named as notorious markets.

Trade Secrets

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile attention and engagement between the United States and China in recent years. Thefts of trade secrets for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly troubling are reports that actors affiliated with the Chinese state, including military actors, have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

In an effort to address these problems, the United States secured commitments from China to issue judicial guidance to strengthen its trade secrets regime. The United States also secured commitments from China not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the Anti-unfair Competition Law. The United States also urged China to take actions to address inadequacies across the range of state-sponsored actors and to promote public awareness of trade secrets disciplines.

At the November 2016 JCCT meeting, China confirmed that it would strengthen its trade secrets regime and plans to bolster several areas of importance, including the availability of evidence preservation orders and damages based on market value as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. In addition, in 2016 and 2017, China circulated proposed revisions to the Anti-unfair Competition Law for public comment. China issued the final measure in November 2017, effective January 2018. Despite some improvements in the protection of trade secrets relative to prior law, the final measure reflects a number of missed opportunities for the promotion of effective trade secrets protection.

Furthermore, the United States continues to have significant concerns about intellectual property protection in China, including with regard to trade secrets. Thus, the protection of trade secrets and intellectual property more broadly represents yet another area where China has failed to comply with its promises for a more market-oriented system, particularly to the extent that the state itself intervenes in commerce to the disadvantage of foreign right holders and sponsors or allows the theft of trade secrets.

Through USTR's Section 301 investigation of China's technology transfer policies and practices, the United States is seeking to address many of the problems being encountered in the area of trade secrets. This investigation and its responsive actions focus on, among other things, the forced disclosure of trade secrets through unwanted joint ventures and the abuse of administrative processes, as well as the state-sponsored, cyber-enabled theft of trade secrets.

Bad-Faith Trademark Registration

Of particular concern is the continuing registration of bad-faith trademarks. At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad-faith trademarks and confirmed that it is taking further steps to combat bad-faith trademark filings. Nevertheless, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off U.S. companies' global reputations.

Pharmaceuticals

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices, regulatory approvals that are delayed or linked to extraneous criteria, weak protections against the unfair commercial use and unauthorized disclosure of regulatory data, and the need for an efficient mechanism to resolve patent infringement disputes.

In April 2017, in response to sustained U.S. engagement, China issued amended patent examination guidelines that required patent examiners to take into account supplemental test data submitted during the patent examination process. However, to date, it appears that patent examiners in China have been either unduly restrictive or inconsistent in implementing the amended patent examination guidelines, resulting in rejections of supplemental data and denials of patents or invalidations of existing patents on medicines even when counterpart patents have been granted in other countries.

China's former Food and Drug Administration (CFDA) also issued several draft notices in 2017 setting out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. This proposed framework also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, in 2018, CFDA's successor agency, the State Drug Administration (SDA), which became the National Medical Products Administration (NMPA) in 2018, issued draft drug registration regulations and implementing measures on drug trial data that would preclude or condition the duration of regulatory data protection on whether clinical trials and first market approval occur in China. It remains unclear, therefore, how China will proceed and whether China finally intends to comply with its commitments in these areas. Accordingly, the United States will remain in close contact with U.S. industry, actively examine developments, and work to ensure that appropriate and non-discriminatory changes are made to the anticipated implementing measures in the areas of patent linkage, regulatory data protection and clinical trials.

Online Infringement

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software and video games. While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and rights holders, particularly small and medium-sized enterprises.

The United States has urged China to consider ways to create a broader policy environment that helps foster the growth of healthy markets for licensed and legitimate content. The United States also has urged China to revise existing rules that have proven to be counterproductive. For example, rules on the review of foreign television content present a serious concern for the continued viability of licensed streaming of foreign television content via online platforms. These rules are disrupting legitimate commerce while inadvertently creating conditions that allow for pirated content to displace legitimate content online.

At the November 2016 JCCT meeting, China committed to actively promote electronic commerce-related legislation, strengthen supervision over online infringement and counterfeiting, and to work with the United States to explore the use of new approaches to enhance online enforcement capacity. In December 2016 and November 2017, China published drafts of a new E-Commerce Law for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown regime and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new E-Commerce Law, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on IPR protection and enforcement for its $900 billion electronic commerce market. However, as finalized, the law instead introduced provisions that weaken the ability of rights holders to protect their rights online and that make it more difficult for Chinese electronic commerce platforms to be liable for selling counterfeit and other infringing goods.

Counterfeit Goods

Although rights holders report enforcement efforts by Chinese government authorities, and high-level officials continue to express their steadfast commitment to curtailing IPR infringement, counterfeiting in China remains widespread and affects a wide range of goods. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China still needs to improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications, as well as to prevent the manufacture and distribution of "placebo" substances that purport to contain active ingredients but do not. In October 2017, China published limited draft revisions to the Drug Administration Law and stated that future proposed revisions to the remainder of this law would be forthcoming. Although many elements of the October 2017 draft revisions appear to be positive, the United States remains in close contact with the U.S. pharmaceutical industry and will continue to monitor developments in this area.

SERVICES

Overview

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, while the United States maintained a $40.2 billion surplus in trade in services with China in 2017 (latest data available), the U.S. share of China's services market remained well below the U.S. share of the global services market.

In 2018, numerous challenges persisted in a range of services sectors. As in past years, Chinese regulators continued to use case-by-case approvals, discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including banking, securities and asset management, insurance, electronic payments, cloud computing, telecommunications, online video and entertainment software, film production and distribution, and express delivery. In addition, China's Cybersecurity Law and related draft and final implementing measures include mandates to purchase domestic information and communications technology products and services, restrictions on cross-border data flows and requirements to store and process data locally, all of which undermine U.S. services suppliers' ability to take advantage of market access opportunities in China. China also has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

Theatrical Films

In February 2012, the United States and China reached an alternative resolution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO case that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial additional revenue for U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States. These discussions continued until March 2018 but were suspended when China embarked on a major government reorganization that involved significant changes to China's Film Bureau.

Audio-visual and Related Services

China's restrictions in the area of theater services have discouraged investment by foreign suppliers, and China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign television channels (except in high-end hotels), prohibits foreign investment in television stations and channels in China, and imposes highly restrictive quotas on the amount of foreign programming that can be shown on a Chinese over-the-air television channel each day. In addition, a draft measure issued in September 2018 would prohibit foreign television shows in prime time. China also prohibits foreign companies from providing film production and distribution services in China.

The United States also remains very concerned about the impact of online publishing rules issued by State Administration of Press, Publication, Radio, Film and Television (SAPPRFT) and MIIT in February 2016 on the ability of foreign companies to engage in the online distribution of videos and entertainment software, as these rules prohibit foreign companies from operating online distribution platforms in China. More recently, the National Radio and Television Administration (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content on over-the-air television, cable television and online audiovisual-content platforms. This draft measure would require that a broadcasting institution's spending on foreign content account for no more than 30 percent of its total available programs in each of several categories, including foreign movies, television shows, cartoons, documentaries and other foreign TV programs.

Financial Services

For years, China has limited the sale of equity stakes in existing Chinese-owned banks for a single foreign investor to 20 percent and has limited the total equity share of all foreign investors to 25 percent, even as it nominally allowed foreign competition in the form of wholly foreign-owned banks. In August 2018, China finalized measures that remove the equity caps relating to Chinese-owned banks and, in theory, should fully open China's banking market to foreign participation. However, in practice, China has maintained restrictions that do not allow for significant non-Chinese competition in commercial banking activities. In fact, the most recently available data shows that the foreign share of banking assets in China actually has declined since China joined the WTO. In addition, even though the China Banking and Insurance Regulatory Commission (CBIRC) introduced a series of measures over the past year that have eased some regulatory restrictions, such as allowing foreign banks to underwrite government bonds, lowering the deposit threshold for non-Chinese banks and removing some restrictions on foreign bank branches, China continues to maintain a number of discriminatory and non-transparent regulatory and licensing processes, including limits on the ability of foreign banks to participate in China's capital markets.

In August 2018, China announced that it had eliminated restrictions on the ability of foreign investors to acquire financial asset management (distressed debt) companies. However, the market access for foreign suppliers remains limited. China has only granted licenses to four state-owned financial asset management companies to acquire distressed debt directly from Chinese banks on a nationwide basis. Foreign financial service suppliers are not currently allowed to even apply for this type of license.

Electronic Payment Services

In 2018, China continued to place unwarranted restrictions on foreign companies, including major U.S. credit and debit card processing companies, which have been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. In a WTO case that it launched in 2010, the United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not take needed steps even to allow foreign suppliers to apply for licenses until June 2017, when China's regulator – the People's Bank of China (PBOC) – finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before even being able to apply for an actual license.

To date, however, no foreign suppliers have been able to secure licenses to supply electronic payment services in China, as the PBOC has been slow even to accept applications filed by U.S. suppliers to begin their preparatory work, which is the first step in the licensing process. Throughout the time that China has actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its supply of electronic payment services abroad, including in the United States. In one telling example, China Union Pay has the right to handle domestic currency transactions in the United States, and it reportedly has reached 100 percent acceptance at U.S. automated teller machines and between 80 percent and 90 percent acceptance at U.S. stores that accept credit cards. This history shows how China has been able to maintain market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO. USTR continues to work to bring China into WTO compliance and to obtain market access for U.S. stakeholders in China.

Internet-enabled Payment Services

The PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees in a sector that previously had been unregulated. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S. industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services for pre-paid cards. In contrast, Chinese payments suppliers have rapidly expanded their presence in the United States in recent years. This report provides clear evidence supporting stakeholder concerns about the difficulties they have faced entering the market and China's unwillingness to license foreign firms to supply a broad range of Internet-enabled payment services. In March 2018, the PBOC announced that it would allow locally incorporated third-party payment suppliers to apply for a payments license in China on the same basis as domestic suppliers. However, to date, no U.S. supplier has received a payments license in China. In addition, as with other ICT sectors, the PBOC has required suppliers to localize data and facilities in China, which could effectively block U.S. suppliers from the market. The United States will continue to closely monitor and push for greater market access for U.S. suppliers in this area.

Insurance Services

China's Negative List for Foreign Investment, issued in June 2018, raised the foreign equity caps from 50 percent to 51 percent for the life, pension, and health insurance sectors. The foreign equity caps are to be lifted in 2021. Nevertheless, at present, China's regulation of these sectors continues to result in market access barriers for foreign insurers, whose share of China's market remains very low. For example, the market share of Chinese-foreign life insurance joint ventures is about seven percent. While China allows wholly foreign-owned subsidiaries in the non-life (*e.g.*, property and casualty) insurance sector, the market share of foreign-invested companies in this sector is only about two percent. China's market for political risk insurance remains closed to foreign participation. Although China's Negative List for Foreign Investment indicates that China has liberalized insurance brokerage services, China in practice seems to continue to restrict the scope of insurance brokerage services that foreign companies can provide. Meanwhile, some U.S. insurance companies established in China encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to establish new operations or to open up new internal branches to expand their operations.

Securities, Asset Management and Futures Services

In November 2017, China announced that it would remove foreign equity restrictions for the securities, asset (fund) management and futures sectors over time. In April 2018, China issued a measure that immediately raised the foreign equity caps for these sectors to 51 percent and stated that China would, in three years, remove the caps on foreign investment. Since April 2018, China has approved a license for one foreign company in the securities sector to establish as a majority foreign-owned joint venture. However, other concerns remain, including the need for accelerated removal of the foreign equity caps, removal of any restrictions on the ability of foreign companies to pursue a broad scope of business, and an end to any other discriminatory and non-transparency licensing processes. In addition, China has started to license a small number of wholly foreign-owned companies to provide certain private fund management services to high-wealth individuals, but these services represent only a subset of the services normally provided by securities and asset management companies. In addition, China continues to block foreign participation in enterprise annuities services, which involve the management of private pension funds.

Telecommunications

China's restrictions on basic telecommunications services, including informal bans on new entry, a 49-

percent foreign equity cap, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and a requirement that companies meet exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic telecommunications services market. China has issued regulations that allow domestic and foreign-invested suppliers to apply for licenses to supply mobile telecommunications resale services. However, the terms and conditions that China applies to foreign suppliers are unfair, as China subjects them to all of the restrictions that it applies to basic telecommunications services. As a result, in practice, there is little interest from foreign suppliers in these licenses. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter the basic telecommunications sector.

Restrictions maintained by China on less highly regulated value-added telecommunications services have also created serious barriers to market entry for foreign suppliers seeking to enter this sector. These restrictions include opaque and arbitrary licensing procedures, foreign equity caps and periodic, unjustified moratoria on the issuance of new licenses. As a result, only a few dozen foreign-invested suppliers have secured licenses to provide value-added telecommunications services, while there are thousands of licensed domestic suppliers.

Internet Regulatory Regime

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet, and is overseen by multiple agencies without clear lines of jurisdiction. China's Internet economy has boomed over the past decade and is second in size only to that of the United States. Growth in China has been significant in service sectors similar to those found in the United States, including retail websites, search engines, online education, travel, advertising, audio-visual and computer gaming services, electronic mail and text, online job searches, Internet consulting, mapping services, applications, web domain registration and electronic trading. However, in the Chinese market, Chinese companies dominate due in large part to restrictions imposed on foreign companies by the Chinese government. At the same time, foreign companies continue to encounter major difficulties in attempting to offer these and other Internet-based services on a cross-border basis.

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks 10 of the top 30 global sites, and U.S. industry research has calculated that over 10,000 domains are blocked, affecting billions of dollars in business, including communications, networking, app stores, news and other sites. Even when sites are not permanently blocked, the often arbitrary implementation of blocking, and the performance-degrading effect of filtering all traffic into and outside of China, significantly impair the supply of many cross-border services, often to the point of making them unviable.

Cross-border Data Transfers and Data Localization

Various draft and final measures being developed by China's regulatory authorities to implement China's Cybersecurity Law, which took effect in June 2017, and China's National Security Law, which has been in effect since 2015, would prohibit or severely restrict cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. These measures also would impose local data storage and processing requirements on companies in "critical information infrastructure sectors," a term that the Cybersecurity Law defines in broad and vague terms. Given the wide range of business activities that are dependent on cross-border transfers of information and flexible access to global computing facilities, these developments have generated serious concerns among governments as well as among stakeholders in the United States and other countries, particularly among services suppliers.

Cloud Computing Services

Especially troubling is China's treatment of foreign companies seeking to supply cloud computing services, including computer data and storage services and software application services over the Internet. China prohibits foreign companies from directly supplying any of these services. Given the difficulty in supplying these services on a cross-border basis (largely due to restrictive Chinese policies), the only option a foreign service supplier has to access the Chinese market is to establish a contractual partnership with a Chinese company, which is the holder of the necessary Internet data center license, and turn over its valuable technology, intellectual property, know-how and branding as part of this arrangement. Based on this model, a foreign supplier has no direct relationship with customers in China and no ability to independently develop its business and has essentially handed over its business to a Chinese company that may well become a global competitor. This treatment has generated serious concerns in the United States and among other WTO Members.

In major markets, including China, cloud computing services are typically offered through commercial presence in one of two ways. They are offered as an integrated service in which the owner and operator of a telecommunication network also offers computing services, including data storage and processing function, over that network, or they are offered as a stand-alone computer service, with connectivity to the computing service site provided separately by a telecommunications service supplier. Although China's General Agreement on Trade in Services (GATS) commitments include services relevant to both of these approaches, neither one is currently open to foreign-invested companies.

China also is proposing to severely restrict the ability of foreign enterprises to offer cloud computing services into China on a cross-border basis. In 2017, China's regulator issued a circular, entitled "On Cleaning up and Regulating Internet Access Services Market", which prohibits Chinese telecommunication operators from offering consumers leased lines or virtual private network (VPN) connections reaching overseas data centers, which could restrict a key access mechanism companies use to connect to foreign cloud computing service suppliers and related resources.

Online Video and Entertainment Software Services

China restricts the online supply of foreign video and entertainment software through measures affecting both content and distribution platforms. With respect to content, the most burdensome restrictions are implemented through exhaustive content review requirements, based on vague and otherwise non-transparent criteria. In addition, with respect to online video, SAPPRFT has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. With respect to distribution platforms, SAPPRFT has instituted numerous measures, such as requirements that video platforms all be state-owned or controlled, that prevent foreign suppliers from qualifying for a license. At the same time, several Chinese companies (including Alibaba) appear exempt from these requirements. SAPPRFT and other Chinese regulatory authorities also have taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution.

Voice over Internet Protocol Services

While computer-to-computer Voice-over-Internet Protocol (VOIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VOIP services interconnected to the public switched telecommunications network (*i.e.*, to call a traditional phone number) to basic telecommunications service licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and thus the United States continues to advocate for eliminating it.

Express Delivery Services

The United States continues to have concerns regarding China's implementation of the 2009 Postal Law and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. In the package segment, China applies overly burdensome and inconsistent regulatory approaches, including with regard to security inspections, and reportedly has provided more favorable treatment to domestic service suppliers when awarding business permits.

Legal Services

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also imposes lengthy delays for the establishment of new offices.

AGRICULTURE

Overview

China was the fourth largest agricultural export market for the United States in 2018, with more than $9 billion in U.S. agricultural exports, down from $20 billion in 2017. Notwithstanding these exports, China remains a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory authorities. The failure of China's regulators to routinely follow science-based, international standards and guidelines further complicates and impedes agricultural trade.

Agricultural Domestic Support

For several years, China has been significantly increasing domestic subsidies and other support measures for its agricultural sector. China maintains direct payment programs, minimum support prices for basic commodities, and input subsidies. China has implemented a cotton reserve system, based on minimum purchase prices, and cotton target price programs. In 2016, China established subsidies for starch and ethanol producers to incentivize the purchase of domestic corn, resulting in higher volumes of exports of processed corn products from China in 2017 and 2018.

China submitted a notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. In December 2018, China notified domestic support measures for the period 2011-2016. This notification showed that China had exceeded its *de minimis* level of domestic support for soybeans (in 2012, 2014 and 2015), cotton (from 2011 to 2016), corn (from 2013 to 2016), rapeseed (from 2011 to 2013) and sugar (2012). The situation was likely even worse, as the methodologies used by China to calculate domestic support levels result in underestimated amounts. The notification also identified changes to its domestic support programs for cotton and corn.

In September 2016, the United States launched a WTO case challenging China's government support for the production of rice, wheat and corn as being in excess of China's commitments. The United States pursued this case aggressively, and in February 2019, a WTO dispute settlement panel found that China has provided trade-distorting domestic support in excess of its commitments under WTO rules.

Tariff-Rate Quota Administration

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized. China's TRQs for rice, wheat and corn do not fill each year. In December 2016, the United States launched a WTO case challenging China's administration of TRQs for rice, wheat and corn, and it is pursuing this case aggressively. The WTO panel hearing this case is expected to issue its decision in mid-2019.

Agricultural Biotechnology Approvals

The number of products pending Chinese regulatory approval continues to increase, causing uncertainty among traders and resulting in an adverse trade impact, particularly for U.S. exports of corn and alfalfa. In addition, the asynchrony between China's biotechnology product approvals and the product approvals made by other countries has widened considerably over the past three years. In May 2017, China committed to review eight pending applications for biotechnology product approvals. China's National Biosafety Committee (NBC) met in May and June 2017 and issued a total of four product approvals. Following the meeting between Presidents Trump and Xi in Buenos Aires in December 2018, the NBC met again and, in January 2019, issued five additional product approvals. Currently, five products remain pending at the final approval stage of NBC review, including three products that should have been reviewed in accordance with China's May 2017 commitment.

Food Safety Law

China's ongoing implementation of its 2015 Food Safety Law has introduced a myriad of new regulations. These regulations, many of which were notified to the WTO TBT Committee but not the WTO Sanitary and Phytosanitary (SPS) Committee, include exporter facility and product registration requirements for goods such as dairy, infant formula, seafood, grains, animal feed, pet food and oilseeds. Additionally, despite facing strong international opposition and agreeing to a two-year implementation delay, Chinese authorities are still considering the implementation of a burdensome and unnecessary measure requiring official certification of all food products, including low-risk food exports. These and other new measures continue to place excessive strain on Chinese agencies' resources, traders and exporting countries' competent authorities, with no apparent added benefit to food safety, yet they provide China a tool to control the volume of food trade as desired.

Poultry

China is the last remaining major trading partner of the United States to maintain a ban on imports of U.S. poultry due to a previous outbreak of high pathogenicity avian influenza (HPAI) in the United States, even though the outbreak was resolved in 2017 in accordance with the guidelines of the World Organization for Animal Health (OIE). China's continuing import ban therefore is unwarranted and unscientific and remains in place despite many exchanges between U.S. and Chinese regulators and repeated demonstrations that U.S. poultry is safe. Separately, the United States has sought China's agreement that it will follow OIE guidelines in the case of future outbreaks of HPAI by only banning imports of poultry from regions in the United States affected by the disease rather than imposing a nationwide ban like the one currently in place. To date, however, China has shown no willingness to consider this regionalization approach, despite its endorsement by the OIE.

Beef

In May 2017, China committed to allow the resumption of U.S. beef shipments into its market consistent with international food safety and animal health standards. However, China back-tracked one month later and insisted that it would retain certain conditions relating to veterinary drugs, growth promotants and animal health that were inconsistent with international food safety and animal health standards. For example, China insisted on maintaining a zero-tolerance ban on the use of beta-agonist and synthetic hormones commonly used by global cattle producers under strict veterinary controls and following Codex Alimentarius Commission (Codex) guidelines. Only about three percent of U.S. cattle qualify for importation into China under these conditions.

Pork

China maintains an approach to U.S. pork that is inconsistent with international standards, limiting the potential of an important export market given China's growing meat consumption and China's recent shortages of domestic pork due to African swine fever. Specifically, China bans the use of certain veterinary drugs and growth promotants instead of accepting the maximum residue levels (MRLs) set by Codex. China also enforces a zero tolerance standard for the detection of salmonella in imported pork, which is unnecessarily prohibitive and generally unachievable. China does not apply the same standard to domestic pork.

Horticultural Products

China has not approved longstanding market access requests for a variety of U.S. horticultural products, despite having received sufficient technical and scientific data justifying market access. Affected products include potatoes, nectarines, blueberries and avocados, among others.

TRANSPARENCY

Overview

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, there remains a lot more work for China to do in this area.

Publication of Trade-related Measures

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations and other measures. China adopted a single official journal, to be administered by the Ministry of Commerce (MOFCOM), in 2006. Many years later, however, it appears that some but not all central government entities publish trade-related measures in this journal, and these government entities tend to take a narrow view of the types of trade-related measures that need to be published in the official journal. These government entities more commonly (but still not regularly) publish trade-related administrative regulations and departmental rules in the journal, but it is less common for them to publish other measures such as opinions, circulars, orders, directives and notices, even though they are all binding legal measures. In addition, China rarely publishes certain types of trade-related measures in the journal, such as subsidy measures, and seldom publishes sub-central government trade-related measures in the journal.

Notice-and-comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations and other measures. While no progress has been made in implementing this commitment at the sub-central government level, the National People's Congress (NPC) instituted notice-and-comment procedures for draft laws in 2008, and shortly thereafter China indicated that it would also publish proposed trade- and economic-related administrative regulations and departmental rules for public comment. Subsequently, the NPC began regularly publishing draft laws for public comment, and China's State Council often (but not regularly) published draft administrative regulations for public comment. In addition, many of China's ministries were not consistent in publishing draft departmental rules for public comment. At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two normative documents addressing this requirement. In May 2018, the State Council issued two higher-level measures addressing this requirement, the Regulations on Procedures for the Formulation of Administrative Regulations and the Regulations on Procedures for the Formulation of Departmental Rules. Despite continuing U.S. engagement, China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize and improve its use of notice-and-comment procedures for so-called "normative documents," which are regulatory documents that do not fall into the category of administrative regulations or departmental rules but still impose binding obligations on enterprises and individuals.

Translations

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations and other measures at all levels of government in one or more of the WTO languages, *i.e.*, English, French and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations into English, but not other types of measures, and China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation. This measure, even if fully implemented, is not sufficient to bring China into full WTO compliance in this area, as China does not publish translations of trade-related laws and administrative regulations in a timely manner (*i.e.*, before implementation), nor does it publish any translations of trade-related measures issued by sub-central governments.

LEGAL FRAMEWORK

Overview

In addition to the area of transparency, several other areas of China's legal framework can adversely affect the ability of U.S. industry to access or invest in China's market. Key areas include administrative licensing, competition policy, the treatment of non-governmental organizations (NGOs), commercial dispute resolution, labor laws and laws governing land use. Corruption among Chinese government officials, enabled in part by China's failure to adhere to the rule of law, is also a key concern.

Administrative Licensing

U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals and even approvals for routine business activities. While there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies report that these efforts have only had a marginal impact on their licensing experiences so far.

Competition Policy

China's implementation of the Anti-monopoly Law poses multiple challenges. One key concern relates to how the Anti-monopoly Law is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the Anti-monopoly Law does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of the State-owned Assets Supervision and Administration Commission (SASAC). In addition, provisions in the Anti-monopoly Law protect the operations of state-owned enterprises and government monopolies in industries deemed nationally important. Many U.S. companies cite selective enforcement of the Anti-monopoly Law against foreign companies seeking to do business in China as a major concern, and they have highlighted the limited enforcement of this law against state-owned enterprises.

Another concern relates to the procedural fairness of Anti-monopoly Law investigations of foreign companies. U.S. industry has expressed concern about insufficient predictability, fairness and transparency in the investigative processes of the NDRC. For example, through the threat of steep fines and other punitive actions, NDRC has pressured foreign companies to "cooperate" in the face of unspecified allegations and has discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese authorities sometimes make "informal" suggestions regarding appropriate company behavior, strongly suggesting that a failure to comply may result in investigations and possible punishment.

In March 2018, as part of a major government reorganization, China announced the creation of the State Administration for Market Regulation (SAMR), a new agency that now houses the anti-monopoly enforcement authorities from the NDRC, MOFCOM and the State Administration of Industry and Commerce (SAIC) in one of its bureaus. It would be a positive development if centralized anti-monopoly enforcement leads to policy adjustments that address the serious concerns in this area.

COLOMBIA

TRADE SUMMARY

The U.S. trade balance with Colombia shifted from a goods trade deficit of $244 million in 2017 to a goods trade surplus of $1.2 billion in 2018. U.S. goods exports to Colombia were $15.0 billion, up 12.7 percent ($1.7 billion) from the previous year. Corresponding U.S. imports from Colombia were $13.8 billion, up 1.7 percent. Colombia was the United States' 21st largest goods export market in 2018.

U.S. exports of services to Colombia were an estimated $6.2 billion in 2017 (latest data available) and U.S. imports were $3.3 billion. Sales of services in Colombia by majority U.S.-owned affiliates were $5.1 billion in 2016 (latest data available), while sales of services in the United States by majority Colombia-owned firms were $96 million.

U.S. foreign direct investment (FDI) in Colombia (stock) was $7.2 billion in 2017 (latest data available), a 3.3 percent decrease from 2016. U.S. direct investment in Colombia is led by mining, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States-Colombia Trade Promotion Agreement

The United States–Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. The CTPA is a comprehensive free trade agreement, under which Colombia immediately eliminated duties on 80 percent of U.S. exports, with most remaining tariffs to be phased out over 10 years, and tariffs on some sensitive agricultural products to be phased out over longer periods of time. Colombia also provides substantially improved market access for U.S. service suppliers under the CTPA. In addition, the CTPA includes disciplines on customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, and labor and environmental protection.

IMPORT POLICIES

Tariffs

About 80 percent of U.S. exports of consumer and industrial products to Colombia became duty free immediately upon the CTPA's entry into force on May 15, 2012. The remaining consumer and industrial product tariffs are to be phased out within 10 years of entry into force, that is, by January 1, 2021. While Colombia generally applies variable tariffs to imports of certain agricultural products pursuant to the Andean Community's price band system, upon entry into force of the CTPA, Colombia stopped imposing such tariffs on U.S. agricultural exports. Almost 70 percent of U.S. agricultural exports (by value) became duty free at entry into force, and duties on most other U.S. agricultural goods phase out over a period of 5 to 12 years. Tariffs on the most sensitive products for Colombia, such as certain poultry products, certain dairy products, sugar, and rice, will be phased out from between 15 years to 19 years from entry into force. U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. As quota volumes increase and over-quota duties are phased out, U.S. access to the Colombian market for those products will increase.

Nontariff Barriers

Truck Scrappage

Prior to March 2013, new freight trucks over 10.5 metric tons (mt) could be legally registered in Colombia either by paying a "scrappage fee" to the government, or by demonstrating that an old freight truck of equivalent capacity had been scrapped and its registration cancelled (the "1x1" policy). In March 2013, without public consultation or a transition period, Colombia issued Decree 486, which eliminated the option to pay the "scrappage fee." As a result, scrapping an old truck of equivalent cargo capacity is now a condition for the registration of new freight trucks over 10.5 mt. This change in policy has significantly affected previously robust sales of imported trucks (which are generally over 10.5 mt). U.S. stakeholders estimate they have lost $1 billion in sales since March 2013.

In September 2016, Colombia issued Decree 1517, which indicated that the "1x1" scrappage policy would be terminated by December 31, 2018. In the interim, pursuant to Decree 1517, and to Ministry of Transport Resolution 332 of February 2017, Colombia established a new government-administered process for the distribution of the scrapping certificates required to register a new truck. Decree 1517 provided that the interim system would be maintained until: 1) the government incentive funds used to encourage scrappage are expended; 2) the "balancing of the market's supply and demand conditions," is reached; or 3) no later than December 31, 2018.

The United States continued to raise the scrappage requirement bilaterally in 2018, as well as in the Organization for Economic Cooperation and Development (OECD) Trade Committee in the context of Colombia's accession to the OECD. In August 2018, the new administration of President Ivan Duque indicated that it could not meet the December 31, 2018 end date for the scrappage policy set by Decree 1517. Following bilateral consultations, in November 2018, the Colombian administration issued Decree 2156, which extended the interim system until June 30, 2019. Colombia has committed to ending the "1x1" scrappage policy by this date.

Under the interim system, buyers can apply to receive the scrapping certificate required to import a new truck through a government-administered process. They pay a fee equivalent to 15 percent of the value of the new truck to access the certificate, and Colombia continues to link the number of available certificates to vehicles scrapped.

Importers and other buyers continue to raise concerns about the long timeframe for transition to a free market, as well as the restrictions that remain in place under the interim system, including limiting buyers to four vehicle registrations per month. An internal instruction memo issued by the Ministry of Transport provides an opportunity to request exceptions to the limit. However, the requester must provide justification for the request, and the criteria for granting or rejecting exceptions remain unclear and provide little certainty to stakeholders.

The United States will continue to engage with Colombia for an effective resolution of this issue to reopen the market to U.S. products, including by pressing Colombia to meet the new June 30, 2019 deadline for termination of the policy.

Internal Taxes on Distilled Spirits and Alcohol Monopolies

Colombia reformed the tax treatment of distilled spirits and oversight of monopolies at the department (provincial government) level in Law 1816 of 2016, effective January 1, 2017. Law 1816 replaced the previous tax structure for distilled spirits, including breakpoints based on alcohol content, which appeared to result in a lower tax rate on spirits produced locally, with a combination of a "specific tax" based on alcohol content, an *ad valorem* tax on the retail price, and a value-added tax. Law 1816 also includes provisions that are aimed at disciplining practices of the department level alcohol monopolies. In response to questions from the United States and other countries, Colombia's Ministry of Finance issued a circular clarifying certain aspects of Law 1816 in December 2017. However, importers continue to seek greater clarity on technical provisions of Law 1816 of 2016, including with respect to price certifications, labeling requirements, and certificates of good manufacturing processes that, depending on how they are implemented, could impact market access. Additionally, importers are concerned by recent changes in the methodology for calculating the *ad valorem* component, and are now analyzing draft legislation (the 2018-2022 National Development Plan law) that would modify Law 1816 of 2016. The United States will continue to monitor the implementation of the 2016 legislation and to scrutinize any proposed measures to ensure Colombia provides non-discriminatory treatment of imported products.

Biologic and Biosimilar Medicines Regulations

In September 2014, Colombia issued a decree establishing a framework for marketing approval of biological and biosimilar medicines. It established three approval pathways. The third pathway, the "abbreviated comparability" pathway, appears to be incompatible with international norms for biosimilars pathways. The 2014 decree came into effect following the entry into force of implementing guidelines in 2017, but it remains unclear what data, clinical trials, or other information will be required to demonstrate biosimilarity with the reference products. According to the stability guideline (Resolution 3690 of August 2016), in force since August 2017, INVIMA, Colombia's sanitary authority, shall accept stability studies of biologic medicines in accordance with international standards. However, the immunogenicity guideline, evaluating the potential for unwanted immune responses, that also entered into force in August 2017 (Resolution 4490 of September 2016, as modified by Resolution 0553 of March 2017), does not formally require clinical trials for assessing the immunogenicity of biosimilars. Although Colombia has not approved any biosimilar drugs under the abbreviated comparability pathway to date, industry stakeholders remain concerned by the prospect of such approvals. The United States will continue to monitor the implementation of the Decree to assess its impact on fair competition in the Colombian market.

Marketing Approval Dependent on Price Review

The National Development Plan 2014-2018 law gives the health ministry the authority to require two additional assessments before medicines and medical devices can receive or renew a sanitary registration, which is required before a product can be sold in Colombia: 1) a health technology assessment by the Institute for Health Technological Evaluation; and 2) a price determination by the health ministry. The Ministry of Health subsequently developed implementing regulations for the relevant provisions, and in October 2017 published for public comment a draft presidential decree related to this issue. Decree 433 was enacted on March 5, 2018, and subsequently modified by Decree 710 of April 21, 2018, to take into account additional stakeholder comments. The decrees clarify that Colombia will not condition regulatory approvals on factors other than safety and efficacy. The United States will continue to monitor this issue, and to encourage Colombia to implement the 2014-2018 National Development Plan (NDP) provisions in such a way as to ensure that they do not undermine innovation.

Customs Barriers and Trade Facilitation

Colombia has not ratified the WTO Trade Facilitation Agreement (TFA). The Colombian congress approved the TFA and then-president Juan Manuel Santos signed Law 1879 of January 2018. Law 1879 is pending review by the Constitutional Court, a step required for international agreements, before Colombia can formally deposit its instrument of ratification with the WTO. Colombia availed itself of the flexibilities for developing countries in Section II of the FTA, and designated the four Section I transparency notifications as Category A commitments, those it will do by entry into force. However, Colombia has not yet submitted the necessary notifications to the WTO Secretariat.

Colombia has significantly delayed implementation of the $200 *de minimis* threshold provided for in the CTPA, which generally exempts duties and taxes for express shipment deliveries valued at $200 or less. The CTPA provided Colombia a two-year transition period after entry-into-force of the CTPA to implement the *de minimis* provision, and the threshold was originally scheduled to be implemented by January 1, 2014, under Law 1607 of 2012. However, Colombia subsequently delayed implementation until January 1, 2017, and in March 2018, Colombia's Ministry of Tax and Revenue (DIAN) issued Decree 349, which further postponed implementation until November 30, 2019. The continuing delay is of significant concern to U.S. stakeholders as well as the U.S. Government. The United States is assessing next steps.

Colombia has also significantly delayed implementation of customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies. In Decree 349 of 2018, DIAN delayed implementation of these reforms, originally slated for implementation in 2016 under Decree 390 of 2016, until November 30, 2019. Slow customs clearance in Colombia hampers both imports and exports, and the ability to submit electronic copies of documents would help accelerate customs clearances.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Ethanol

The United States continues to be concerned by stakeholder reports of frequently changing and unclear technical requirements that present obstacles to the export of U.S.-produced ethanol to Colombia. In December 2016, the Ministry of Environment and Sustainable Development published for public comment a draft decree regarding carbon footprint requirements for ethanol. The draft was reissued with revisions in January 2017, and notified to the WTO's Technical Barriers to Trade (TBT) Committee in April 2017. The United States raised concerns both bilaterally and in the WTO TBT Committee regarding Colombia's methodology in developing the standard and its ability to apply the certification procedures in a non-discriminatory manner. On September 25, 2017, the Ministry of Environment and Sustainable Development published the final resolution (number 1962), to become effective 30 days later. After the United States asked for a reasonable implementation period of at least six months, Colombia deferred implementation for another 60 days, until December 29, 2017, at which time it entered into force. The United States will continue to monitor developments closely and engage with Colombia to ensure that Colombia provides access for U.S. ethanol on a non-discriminatory basis.

Cosmetic Soaps

Resolution 837 of 2017, issued jointly by the Ministry of Health and the Ministry of Environment and Sustainable Development, established the maximum level of phosphorus and the level of biodegradability of surfactants in detergents and soaps. The resolution also applied to cosmetic soaps, despite the fact that these products do not typically include ingredients or chemicals for which biodegradability is a concern. The United States raised concerns about this issue at the WTO TBT Committee. Colombia initially delayed implementation of the measure until May 5, 2018, and issued a revised decree (Decree 1770) in May 2018. The new decree rescinds the requirement for cosmetic soaps to undergo biodegradability testing, and postpones for another 18 months the requirement to test cosmetic soaps for phosphorous content. The United States will continue to monitor this issue to ensure that Colombia does not subject cosmetic soap products to unduly burdensome testing and certification requirements.

Sanitary and Phytosanitary Barriers

Risk Categorization and Associated Import Requirements

Through INVIMA (Colombia's sanitary authority, analogous to the U.S. Food and Drug Administration) Resolution 719 of 2015, Colombia has assigned risk categories to foods with a view to imposing new requirements on foods depending on the category of risk. While Colombia has indicated it intends to apply the envisioned categories to both imported and domestic products, the United States is concerned about the criteria that Colombia uses to assign risk. The United States continues to engage with Colombia and affected stakeholders regarding the impact of these requirements.

Ministry of Health Decree 539 of 2014 included numerous new requirements for high-risk foods, including plant registration with INVIMA and the inspection of facilities intending to export to Colombia. In January 2017, Colombia notified a draft regulation to the WTO that would amend Decree 539 by introducing a provision that allows for the recognition of the food safety systems of trading partners with which Colombia has free trade agreements, thereby exempting U.S. federally regulated establishments from individual inspection and approval requirements. The United States welcomed the prospective addition of this provision to Decree 539, but Colombia has yet to issue the final amended measure.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia was placed on the Priority Watch List in the 2018 Special 301 Report with an Out-of-Cycle Review focused on implementation of certain provisions of the CTPA and monitoring the implementation of the 2014-2018 National Development Plan (NDP). In July 2018, Colombia signed into law amendments to the copyright law intended to implement CTPA requirements after the Colombian Constitutional Court invalidated in 2013 a law on copyright and other certain CTPA obligations on procedural grounds. Colombia has not yet implemented Internet service provider liability limitations and notice and takedown procedures and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

The 2014-2018 NDP included a requirement to develop an intellectual property rights (IPR) enforcement policy to help guide, coordinate, and raise awareness of IPR enforcement. While progress was made in certain areas, the United States raised concerns over provisions that could weaken innovation and intellectual property systems, such as those concerning conditions for pharmaceutical regulatory approvals. As noted above, in 2018, Colombia issued decrees to clarify that it will not condition regulatory approvals on factors other than safety and efficacy. Colombia continues to experience high levels of counterfeiting and piracy, with right holders raising specific concerns with illicit recordings in cinemas, insufficient enforcement at borders, in free trade zones, and in physical markets, online and mobile piracy, and the rampant availability of hardware used exclusively for pirating broadcasting signals.

SERVICES BARRIERS

The CTPA grants U.S. service suppliers substantially improved market access. Some restrictions, such as economic needs tests and residency requirements, remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Audiovisual Services

Under the CTPA, Colombia committed to reduce its domestic content requirement from 50 percent to 30 percent for free-to-air national television programming broadcast during the hours of 10:00 to 24:00 on Saturdays, Sundays, and holidays. In 2013, Colombia enacted legislation to implement this obligation.

However, in 2013, Colombia's Constitutional Court invalidated the legislation on procedural grounds. The United States will continue to press Colombia to revise its legislation as soon as possible to implement its obligations under the agreement.

In May 2017, the National Television Authority (ANTV) proposed changes to the assessment of regulatory fees on subscription television services, which are used to finance the operation of state-owned broadcasters. Following a public comment period, ANTV published Resolution 1813 in October 2017, changing the method of calculation from a fee-per-subscriber methodology to a fee based on the gross revenues of the supplier. The new methodology also includes a higher assessed fee for any supplier whose subscribers reside primarily in large cities, which largely impacts one U.S.-owned supplier. Furthermore, suppliers were assessed retroactive fees for 2017 based on a 2018 resolution. The United States continues to encourage Colombia to ensure that fees are assessed in an equitable and reasonable manner to all providers of video services.

Telecommunications Services

Roaming

In February 2017, the Communication Regulation Commission (CRC) amended its regulation on wholesale voice and data roaming services in Colombia to establish a new pricing methodology. A U.S.-invested operator in Colombia maintains that the new methodology is inconsistent with the terms under which that operator invested in Colombia and was established without adequate analysis of the methodology's financial impact. The United States will look to Colombia to ensure that the regulatory decisions of the CRC with respect to roaming are consistent with Colombia's trade commitments, including that such services are provided on reasonable and non-discriminatory terms and conditions.

Spectrum

After President Duque's inauguration in August 2018, Colombian authorities have pursued reforms to current law for the telecommunications sector, including consolidating the separate telecommunications, spectrum, and television regulators into one entity and changing the length of spectrum licenses from 10 to 30 years. However, the United States expects that efforts to modernize regulation of the telecommunications sector should not delay Colombia's efforts to complete the process initiated by the Ministry of Information Technologies and Communication (MinTIC) in February 2017 to allocate the 700 MHz band. This band of spectrum can be particularly useful for new entrants and smaller competitors because of technical characteristics that support coverage of larger geographic areas with less infrastructure, enabling a provider to quickly and economically build up its customer base, particularly where population density is lower. The United States encourages Colombia to move expeditiously to conduct the auction and to give full consideration to public comment in finalizing the rules, including attention to the need to promote competition in the Colombian mobile services market. The United States will continue to monitor these developments, with a view to ensuring that Colombia implements its trade commitments with respect to the allocation and use of spectrum, including that procedures are timely, transparent, and non-discriminatory.

Distribution Services

Commercial Agency

A section of Colombia's commercial code provides protections for agents that can make it difficult and costly for companies to terminate a commercial agent (sales representative) contract. The United States has been working with Colombia to address this issue and will continue to monitor progress.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $1.5 billion in 2018, a 8.7 percent decrease ($139 million) over 2017. U.S. goods exports to Costa Rica were $6.3 billion, up 2.9 percent ($176 million) from the previous year. Corresponding U.S. imports from Costa Rica were $4.9 billion, up 6.9 percent. Costa Rica was the United States' 38th largest goods export market in 2018.

U.S. exports of services to Costa Rica were an estimated $2.0 billion in 2017 (latest data available) and U.S. imports were $2.8 billion. Sales of services in Costa Rica by majority U.S.-owned affiliates were $1.9 billion in 2016 (latest data available), while sales of services in the United States by majority Costa Rica-owned firms were $83 million.

U.S. foreign direct investment (FDI) in Costa Rica (stock) was $1.6 billion in 2017 (latest data available), a 16.2 percent increase from 2016. U.S. direct investment in Costa Rica is led by manufacturing, professional, scientific, and technical services, and mining.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR, or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services, and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, labor, and environment.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Costa Rica applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. originating consumer and industrial goods have entered Costa Rica duty free since January 1, 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Costa Rica duty free and quota free. In addition, more than half of U.S. agricultural exports currently enter Costa Rica duty free under the Agreement. Costa Rica will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020, on chicken leg quarters by 2022, on rice by 2025, and on dairy products by 2028. For certain agricultural products (rice, pork, dairy, and poultry), tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Costa Rica's CAFTA-DR commitments provide for liberalizing trade in fresh potatoes and onions through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Costa Rica is required under the CAFTA-DR to make TRQs available on January 1 of each year. Costa Rica monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure Costa Rica issues these permits in a timely manner.

Taxes

Costa Rica currently assesses a specific excise tax on distilled spirits that is calculated as a percentage of alcohol per liter, based on three specific rates (Law 7972). The highest rate applies to spirits bottled at a rate above 30 percent alcohol-by-volume (abv). While the locally produced spirit (produced in the largest volume by the state-owned alcohol company) is bottled at 30 percent abv, the vast majority of internationally traded spirits are bottled at 40 percent. Breakpoints for the tax rates based on alcohol content appear to result in a lower tax rate on spirits produced locally. Furthermore, local producers pay the tax within the first 15 days of each month on sales made during the prior month, while importers must pay the tax prior to release of their product from customs.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Costa Rica, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal transshipment of goods.

Costa Rica's Information Technology Customs Control (TICA) system is designed to allow for a single automated customs declaration process, with a centralized database, including electronic payment, integrated risk analysis, and connectivity with public and private institutions. However, the Costa Rican customs authority continues to require that sanitary and phytosanitary (SPS) documents be submitted in hard copy at the time of import. The United States continues to encourage Costa Rica to expand the use of electronic processing, in the interest of further facilitating trade.

Costa Rica ratified the WTO Trade Facilitation Agreement (TFA) on May 1, 2017. The Costa Rican Legislative Assembly subsequently enacted a law approving the ratification, which the Costa Rican Constitutional Court approved. The law includes provisions to assist with TFA implementation, including the establishment of a trade facilitation council, which includes private sector representatives and has decision-making authority. Implementation of the TFA requires strengthening the quality of, and control over, customs processes and procedures with the support of the TICA system, which Costa Rican Customs is currently addressing. In addition, as required in the TFA, Costa Rica established and launched in September 2017 a National Committee on Trade Facilitation (CONAFAC) to help internal coordination and the applications of its provisions. This committee, made up of six public sector and five private sector representatives, is responsible for the coordination and dialogue among public institutions with foreign trade and private sector responsibilities.

Cosmetics, Nutritional, and Dietary Supplements

The Costa Rican Ministry of Health requires a Good Manufacturing Practices (GMP) certificate or a License of Operation as a prerequisite for approval of cosmetics and toiletries registrations in Costa Rica. U.S. manufacturers have difficulty complying with this requirement because a U.S. Federal Government certificate of this kind does not exist. In some cases, U.S. companies have complied with the requirement by submitting documents from state or local government authorities or trade organizations. However, for U.S. manufacturers unable to obtain such documents, the regulation results in an inability to obtain approval to sell in the Costa Rican market. The United States has explained to the relevant authorities in Costa Rica that the U.S. Federal Government does not issue the GMP certificate, but the issue persists.

Instead of a GMP certificate, the U.S. Government issues export certificates for cosmetic products that are legally marketed in the United States when required for export. These certificates can be issued for a specific product, a list of products, or for a firm. U.S. cosmetic firms need to submit a request to the U.S. Food and Drug Administration for such certificates. The U.S. Government has established a system for a foreign government to verify if it has issued an export certificate to a U.S. cosmetic firm.

Beginning in 2014, U.S. producers of dietary supplements have expressed concerns regarding Costa Rican product registration and technical regulations related to nutritional and dietary supplements. Because the United States does not regulate nutritional and dietary supplements as pharmaceuticals, U.S. manufacturers of these products generally do not have the certification and product analysis required under the Central American Technical Regulation for Natural Medicines. In one medicine-related area, the U.S. Government has established GMP regulations for dietary supplements marketed in the United States. These GMP regulations are similar to those available under U.S. GMP regulations for pharmaceuticals products. U.S. dietary supplement firms that market their products in the United States and export their products should be able to demonstrate their compliance with U.S. regulations, if required.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Costa Rica's telecommunications regulator (SUTEL) imposes a requirement that can result in the-frequent retesting and recertification of telecommunications hardware or software following some categories of updates. The U.S. Government continues to raise with Costa Rica the concerns that stakeholders have raised: that Costa Rica does not follow international procedures for testing and certification of mobile handsets and other information and communications technology (ICT) products; that these country-specific requirements can lead to redundant testing, particularly when products are required to undergo testing in both exporting and importing countries; and, that these requirements are burdensome on U.S. software developers, posing an obstacle to international trade. Costa Rica continues to argue in support of these measures, noting SUTEL's automation of the process to expedite results.

Sanitary and Phytosanitary Barriers

Costa Rica has decreased the use of SPS measures as a tool to obstruct trade in the past year. U.S. exporters and Costa Rican importers reported a normal flow of the issuance of Import Permits for sensitive commodities. The U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Ministry of Agriculture of Costa Rica conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

U.S. exporters continue to complain about the high cost of quarantine fumigations at Costa Rican ports of entry. Quarantine fumigations are a remediation measure needed when shipments are intercepted with quarantine pests. Excessive fumigation costs have prompted exporters to forego this option and to send the containers back to the United States. The quarantine fumigation topic is being managed under the Costa Rican port modernization project led by the Ministry of Foreign Trade (COMEX). The U.S. Government continues to meet with the Plant Health and Customs Department to find a solution.

During the first half of 2016, importers complained that the Ministry of Agriculture used phytosanitary import permits as a tool for stopping or delaying imports of onions from the United States without clear phytosanitary concerns, and that the Ministry of Agriculture's failure to issue permits in a timely manner resulted in the loss of market access for onions for nearly one year. Although Costa Rica eventually issued all pending permits, the untimely release of the permits during the local harvest caused a temporary (and unnecessary) glut of onions in the market. During 2018, U.S. onion growers did not raise this concern. The United States will continue to monitor this issue to avoid this type of delay from occurring in the future.

SUBSIDIES

Export Subsidies

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). Costa Rica has modified its Free Trade Zone Regime in order to conform to this requirement. Tax holidays are available for investors in free trade zones. The Free Trade Zone Regime is defined in Costa Rica as a set of incentives and benefits granted by the country to companies making new investments and complying with local requirements and obligations. This regime is governed by the Free Zone Regime Law, Number 7210, and its regulations. Costa Rica's tax incentives and benefits are standardized. They apply to all companies equally, so that there is no need for individual negotiations. Companies that base operations in areas outside the Greater Metropolitan Area (GMA) can enjoy greater benefits, such as: (1) a 100 percent income tax exemption for the first 12 year period, instead of the first eight year period for companies inside the GMA; and (2) a 50 percent income tax exemption for the following six year period instead of the four year period for companies inside the GMA.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers can bid on the procurements of most Costa Rican government entities, including those of key ministries and state-owned enterprises, on the same basis as Costa Rican suppliers. The anticorruption provisions in the CAFTA-DR require the Costa Rican government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. There is no requirement that U.S. firms act through a local agent to participate in public tenders.

U.S. companies have indicated that the private sector (foreign and domestic) appears to be increasingly disadvantaged in public bids when competing against Costa Rican state-owned enterprises in the Information Communications Technology (ICT) and insurance sectors. One provision (Article 2) in the Public Contracting Law allows non-competitive award of contracts to public entities if officials of the awarding entity certify the award to be an efficient use of public funds. A leading business association asserts that between 2012 and 2016, the government invoked Article 2 in 48 instances for a total contracted amount of over $59 million in ICT goods and services. This pattern of behavior continues into the present. Private sector insurance companies and brokers believe that the Costa Rican government preferentially contracts with the state-owned insurance company, INS, despite a requirement from the General Controller's office that decentralized government entities, such as the state-owned electricity company ICE, receive competitive quotes for insurance policies. In 2017, however, the Social Security Administration (CCSS) contracted with a private insurance company in what may be a trend towards competitive insurance contracting by government entities. That contract will be re-bid soon. The United States will continue to monitor Costa Rica's government procurement practices to ensure they are consistent with CAFTA-DR obligations.

The electronic procurement platform SICOP (formerly Merlink) provides a single purchasing platform for all participating ministries with an entirely paperless procurement process based on a secure database, allowing enhanced levels of transparency and competition in the procurement process. A wide range of Costa Rican government agencies have adopted SICOP as their procurement platform; as of 2016 all remaining government entities are legally obligated to migrate to the system. As a digital platform, SICOP requires that suppliers use the Costa Rican digital signature; however, SICOP now offers an alternative digital signature for foreign suppliers through GlobalSign and, as of late 2018, close to 100 foreign firms operate through that facility.

Costa Rica is not a signatory to the WTO Agreement on Government Procurement (GPA), but became an observer to the WTO Committee on Government Procurement on June 3, 2015.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica remained on the Special 301 Report Watch List in 2018. The United States welcomes Costa Rica's ongoing commitment to engage with the United States on efforts to strengthen its intellectual property rights (IPR) regime. The United States welcomes increased intra-governmental coordination on IPR and the increase in the number of ongoing criminal investigations. Costa Rica also needs to otherwise bolster IPR enforcement to curb online piracy and physical piracy, end government use of unlicensed software, and address cumbersome border measure processes to deter counterfeit and pirated goods. The United States strongly encourages Costa Rica to build on initial positive steps it has taken to protect and enforce IPR, and to continue with bilateral discussions of these issues.

SERVICES BARRIERS

Insurance Services

Private insurance companies continue to face challenges in light of the market power that INS derives from its former monopoly position. Nevertheless, the competitive environment for those companies has gradually improved as the insurance regulator SUGESE has addressed many of their specific concerns.

INVESTMENT BARRIERS

Costa Rica's regulatory environment can pose significant barriers to investment. One common problem is inconsistent action between institutions within the central government or between institutions in the central and municipal levels of government. The resulting inefficiency in regulatory decision-making is especially noticeable in infrastructure projects, which can languish for years between the award of a tender and the start of project construction.

OTHER BARRIERS

Bribery and Corruption

Some U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a concern and a constraint to successful investment in Costa Rica. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming. CAFTA contains strong public sector antibribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

Localization Barriers

Since 2009, Costa Rica has implemented a number of protectionist measures to support local rice producers, including price controls and tariffs. While many of these distorting measures have either expired or been discontinued, the overarching issue of excessive domestic support for rice remains.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider novel or inconsistent interpretations of tax regulations and principles. The United States will continue to monitor implementation of the regulations and other tax measures.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was $935 million in 2018, a 4.4 percent increase ($39 million) over 2017. U.S. goods exports to Cote d'Ivoire were $311 million, down 2.7 percent ($9 million) from the previous year. Corresponding U.S. imports from Cote d'Ivoire were $1.2 billion, up 2.5 percent. Cote d'Ivoire was the United States' 117th largest goods export market in 2018.

TRADE AGREEMENTS

Cote d'Ivoire is a member of the West African Economic and Monetary Union (WAEMU), of which all of the members of are also members of the larger Economic Community of West African States (ECOWAS). It is also a member of the WAEMU customs union. Cote d'Ivoire participates in the ECOWAS free trade area and its common external tariff, which is slated to be fully harmonized by 2020. Cote d'Ivoire has ratified both the European Union-West Africa Economic Partnership Agreement (EPA) and a bilateral EPA with the European Union (EU). The bilateral EPA has entered into force; however, the EU-West Africa EPA has not. Cote d'Ivoire is the host of the African Development Bank (AfDB), and an important member of the Organisation pour l'Harmonization en Afrique du Droit des Affaires (OHADA), an organization that harmonizes a broad range of African legal systems that previously were characterized by a wide disparity in business law, codes, rules, regulations and local conventions affecting business. The agreement creates a number of uniform acts and sets up organizations when necessary to implement the acts. Cote d'Ivoire ratified the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

IMPORT POLICIES

Tariffs and Taxes

Imports from other countries are subject to tariffs based on the WAEMU Common External Tariff (CET) schedule of 5 percent for raw materials and inputs for local manufacture, 10 percent for semi-finished goods, and 20 percent for finished products. A one percent charge is levied on the cost, insurance, and freight (CIF) value of imports, except those destined for re-export, transit, or donations for humanitarian purposes under international agreements. An additional 0.8 percent levy (solidarity tax) on the CIF value of imports goes to finance WAEMU commissions and to assist landlocked WAEMU members, such as Niger, Burkina Faso, and Mali. To protect national industries, Cote d'Ivoire imposes special taxes on imports of fish (between 5 percent and 20 percent), rice (between 5 percent and 10 percent), alcohol (45 percent), tobacco (36 percent), cigarettes (36 percent), certain textile products (20 percent), and petroleum products (between 5 percent and 20 percent). A tax of Franc zone CFA 1000 (approximately $1.67) per kilogram is applied to all imports of frozen meats. Cote d'Ivoire applies minimum import prices (MIPs) to imports of certain products such as cooking oil, cigarettes, sugar, used clothing, concentrated tomato paste, broken rice, matches, notebooks, tissues, polypropylene sacks, alcohol, and milk, although the WTO waiver allowing the application of MIPs on some products has long since expired.

Nontariff Barriers

There are no quotas on merchandise imports, although the following items are subject to import prohibitions, restrictions, or prior authorization: petroleum products, animal products, live plants, seeds, arms and munitions, plastic bags, distilling equipment, pornography, saccharin, narcotics, explosives, illicit drugs, and toxic waste. Textile imports are subject to some authorization requirements by the External Trade Promotion Office, but the market is generally open.

Import Licensing

Imports of cotton and products consisting of 100 percent cotton, such as the "Wax and Resin" textile cloth most often used in traditional African clothing, require an import license from the External Trade Promotion Office. Imports of alcoholic beverages are also subject to import license requirements from the External Trade Promotion Office, with special labelling that states, "For sale in Cote d'Ivoire." The importer must give yearly statistics to the External Trade Promotion office.

Pharmaceutical, medical, and beauty-health care products must be registered with and approved by the Health Ministry through the Direction de la Pharmacie, du Médicament et des Laboratoires (DPML).

Import Restrictions

A new regulation in force since July 2018 limits the age of imported used vehicles to a maximum of five years.

Customs Procedures and Trade Facilitation

For all imports above CFAF 550,000 (approximately $956) of value, the importer must establish an anticipated import declaration (DAI) in the customs computerized clearance system. The importer must collect the DAI from the customs broker or inspection company (COTECNA or Webb Fontaine) handling the shipment. Clearance time is supposed to be relatively short, but delays of many weeks or months without a clear justification or explanation are common.

All items imported into Cote d'Ivoire must have a certificate of compliance with relevant requirements to clear customs. Three European companies, BIVAC (affiliated to the French group Bureau Veritas) and the Swiss-based firms COTECNA and SGS are contracted to carry out all qualitative and quantitative verifications of goods imported into Côte d'Ivoire with a value exceeding CFAF 1.5 million (approximately $3,000).

Cote d'Ivoire has ratified the WTO Trade Facilitation Agreement (TFA). As a developing country Member of the WTO, Cote d'Ivoire has availed itself of the implementation flexibilities in Section II of the TFA. However, Cote d'Ivoire has failed to notify its Category B commitments with definitive timelines, which were due to the WTO Secretariat one year after entry into force of the Agreement, February 22, 2018. Cote d'Ivoire also has failed to designate the nearly 70 percent of its outstanding commitments in Section I of the Agreement.

TECHNICAL BARRIERS TO TRADE

Transparency of the regulatory system in Côte d'Ivoire is a concern, as companies complain that regulations are issued without warning and without a period for public comment.

All merchandise packaging must be clearly labeled as to its origin. All packages must clearly mention "MADE IN *Country of origin*." Manufactured food products must be labeled in French and have an expiration date. If an expiration date does not appear on the label, health officials may interpret the date of manufacture as an expiration date and deny entry of the product. Standards generally follow French or European norms.

GOVERNMENT PROCUREMENT

The government publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The Bureau National d'Etudes Techniques et de Développement (BNETD), the government's technical and investment planning agency and think tank, sometimes serves as an executing agency in major projects to be financed by international institutions.

The government created the Direction des Marchés Publics, a centralized office of public bids in the Ministry of Finance, to help ensure compliance with international bidding practices. While the procurement process is open in theory, in practice it is often opaque. There are numerous examples of significant government contracts that were awarded through single-source procurement procedures rather than through public tenders. Some well-entrenched foreign companies, particularly French ones, often appear to have preferred position in securing bid awards as a result of longstanding relations with government officials. Though not formally required, foreign companies often find it essential to partner with a local company in submitting a bid. During negotiations on a tender, the government will often impose local content requirements on foreign companies. In other instances, the government may award sole source bids without a tender, citing as a justification the high technical capacity of a firm or a declared emergency. Many firms continue to point to corruption as an obstacle that affects procurement decisions.

At times, the government has cancelled or changed the publicly known result of a tender without giving a clear reason. In one instance, the government entered into commercial discussions with a U.S. company, expressing interest in the product or service of the firm and encouraging it to develop presentations and a work product, only to suddenly declare that the government was no longer interested, after having obtained valuable commercial information from the firm.

Cote d'Ivoire is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Cote d'Ivoire is a party to several international and regional intellectual property (IP) conventions. However, the inadequate enforcement of IP rights remains a serious concern. The Ivoirian Copyright Office (BURIDA) utilizes a labeling system to prevent counterfeiting and piracy in audio, video, literary, and artistic works. BURIDA has also facilitated stakeholder engagement to promote IP, and its police unit has conducted raids to confiscate pirated CDs and DVDs. However, IP enforcement suffers in Cote d'Ivoire because of limited resources and a lack of customs checks at the country's porous borders.

SERVICES BARRIERS

Membership in professional associations in law and accounting require Ivoirian nationality. For example, Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. The former is liberalized, but in order to be admitted to the Ivoirian bar and practice in a courtroom, one must be accredited by the Ivoirian lawyers association, a group that requires Ivoirian nationality. There are restrictions on the registration of foreign nationals by the accountants association unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

INVESTMENT BARRIERS

Cote d'Ivoire has restrictions on and requires prior approval for foreign investment in the health sector, law and accounting firms, and travel agencies, particularly in terms of required local licenses. In negotiating the terms of an investment, the government will often require local content to be used; for example, the government may require the investor to procure products locally and hire local personnel rather than bringing them from abroad. Majority foreign ownership of companies in these sectors is not permitted, though foreign companies currently operate in all these sectors in partnership with local firms and with government permission.

The Ivoirian investment code provides tax incentives for investments larger than $1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax regulations require the additional approval of the Ministry of Finance and Economy and the Ministry of Industry. The clearance procedure for planned investments, if tax breaks are sought, is time consuming and confusing. Even when companies have complied fully with the requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism. The government has undertaken reforms to attract and facilitate investment. A new investment code is being developed to focus on priority sectors such as agriculture, agribusiness, health, and hotel business.

OTHER BARRIERS

Bribery and Corruption

Bribery and corruption in Cote d'Ivoire are significant concerns, and bribes are often regarded as necessary to speed up the slow bureaucratic process or to secure a tender. Corruption and lack of capacity in the judicial and security services have resulted in poor enforcement of private property rights, particularly when there is bribery, or the entity in question is foreign and the plaintiff is Ivoirian or a long-established foreign resident.

Export Policies

The government encourages domestic processing of agricultural products such as cocoa, cashews, and mangoes by imposing an export tax on unprocessed products, but not on processed items.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with Dominican Republic was $3.3 billion in 2018, a 5.5 percent increase ($171 million) over 2017. U.S. goods exports to Dominican Republic were $8.6 billion, up 9.4 percent ($734 million) from the previous year. Corresponding U.S. imports from Dominican Republic were $5.3 billion, up 11.9 percent. Dominican Republic was the United States' 33rd largest goods export market in 2018.

U.S. exports of services to Dominican Republic were an estimated $1.9 billion in 2017 (latest data available) and U.S. imports were $5.0 billion. Sales of services in Dominican Republic by majority U.S.-owned affiliates were $1.0 billion in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Dominican Republic (stock) was $2.1 billion in 2017 (latest data available), a 74.6 percent increase from 2016. U.S. direct investment in Dominican Republic is led by manufacturing, wholesale trade, and information services.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services, and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environment.

IMPORT POLICIES

Tariffs

Under the CAFTA-DR, 100 percent of U.S. originating consumer and industrial goods have entered the Dominican Republic duty free since January 1, 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter the Dominican Republic duty free and quota free creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Also under the CAFTA-DR, the Dominican Republic will eliminate tariffs on nearly all agricultural goods by 2020, and on chicken leg quarters, some dairy products, and rice by 2025. Tariff-rate quotas (TRQs) permit duty-free access during the tariff-phase out period for specified quantities of 47 different agricultural products, including ice cream, selected cuts of beef, cheddar cheese, and yogurt, with the duty-free quantity progressively increasing during the tariff phase-out period.

The Dominican Republic government is required under the CAFTA-DR to make TRQs available on January 1 of each year. However, the Dominican Republic often does not issue quota allocations until several months into the year. In addition, both the issuance of quotas for sensitive products and the distribution of import licenses, which allow importers to exercise their quota rights, have frequently been delayed. While the Ministry of Agriculture made substantial improvements to its administration of TRQs in 2013 and 2014, the 2015 CAFTA-DR TRQs were not issued until March 2015, while 2016 TRQs were not issued until February 5, 2016. For 2017, TRQ's were issued in advance, on December 28, 2016, but the National Commission for Agricultural Imports also issued a separate Resolution 08/2016, under which the Dominican Republic restricted the availability of TRQs for rice and powdered milk, and bean imports in general, to certain months of 2017. For 2018, the timing of TRQ issuance was improved. However, the United States will continue to engage on these issues with the Dominican Republic and will monitor its performance with regard to the timely opening and availability throughout the calendar year of the TRQs, the timely distribution of import licenses, the distribution of appropriate quota volumes, and the ability of TRQ products to enter the Dominican Republic from January 1 of each year.

Nontariff Barriers

Import Licensing

In addition to concerns with the administration of TRQs, set out above, the Dominican Ministry of Agriculture continues to administer the issuance of import licenses as a means to manage trade in sensitive commodities. The United States continues to raise concerns regarding this matter with Dominican authorities and is working to eliminate this practice. This is a regular concern with respect to trade in some sensitive products (*e.g.*, dry beans and dairy products), but intermittently with respect to other products as well.

The Dominican Republic maintains a ban on imports of all used vehicles over five years old, and took an exception under the CAFTA-DR to the obligation not to impose import restrictions for this measure. Since late 2011, importers of U.S.-made used vehicles less than five years old have reported that the Dominican customs authority has frequently challenged the eligibility of those vehicles to be considered as originating under the CAFTA-DR and therefore eligible for preferential tariff treatment under the CAFTA-DR. Dominican customs authorities cited technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address complaints received from exporters of used cars of U.S. manufacture.

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including the Dominican Republic, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including the Dominican Republic, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal transshipment.

Despite the obligation under the WTO Customs Valuation Agreement, the Dominican Republic has not submitted Checklist of Issues replies to the WTO Committee on Customs Valuation. The United States will continue to emphasize the importance of submitting the overdue notification, which is an integral to successful implementation of the WTO Customs Valuation Agreement

In February 2017, the Dominican Republic ratified the WTO Trade Facilitation Agreement (TFA), which contains provisions for expediting the movement, release, and clearance of goods, and sets out measures for effective cooperation for customs compliance and trade facilitation issues. The Dominican Republic availed itself of the flexibilities for developing countries in Section II of the TFA, but has not yet notified its definitive dates of implementation for Category B commitments (due February 22, 2018). The Dominican government established a National Trade Facilitation Committee (NTFC) in December 2017 by presidential decree. As of October 2018, the NTFC had held three plenary sessions, which have focused on developing an automated single window filing system for international trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Regulation of Steel Rebar

Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican technical regulation (RTD 458) administered by the Ministry of Industry and Commerce (MIC) and the Dominican Institute for Quality (INDOCAL) constitutes a barrier to trade. Although U.S. steel rebar is produced by certified mills in the United States, Dominican authorities have required imported U.S. rebar to be sampled and tested by third party laboratories. Because no suitable third party laboratories are present in the Dominican Republic, samples have had to be sent back to the United States for testing. These conformity assessment procedures appear to present unnecessary obstacles to international trade, deviate from international standards, lack transparency in their application, and have unduly increased the cost and time required for commercialization of rebar in the Dominican Republic.

RTD 458 also raises significant national treatment concerns, as domestic steel rebar producers are not subject to the same type of testing required for imports. According to RTD 458, both imported and locally produced steel rebar are subject to random sampling and inspection of production plants; however, only imported rebar is additionally subject to third party testing by accredited laboratories.

The United States has repeatedly engaged the Dominican government on this issue, and raised the issue on the margins of the WTO Technical Barriers to Trade Committee. Extensive bilateral discussion during 2017 and 2018 yielded some progress, with the Dominican Republic reducing customs clearance time for U.S. steel rebar. However, uncertainty for U.S. steel rebar exporters remains. Dominican authorities have yet to reform the regulations and practices to eliminate obstacles to international trade and ensure that rebar imported from the United States is treated no less favorably than domestically manufactured rebar.

Food Labeling

On July 12, 2016, the Dominican government issued a statement announcing the enforcement of NORDOM 53, a local regulation for labeling prepackaged foods. As of April 1, 2017, the Spanish language label on prepackaged products must be applied at the point of origin, instead of in the destination country as was the usual practice. Enforcement of the regulation initially focused on dairy products, but was extended to all pre-packaged foods. The United States will continue to monitor the situation and continue to encourage the Dominican government to enforce its regulations in a manner that does not distort trade.

Sanitary and Phytosanitary Barriers

Sanitary Registration

Since March 2018, delays in the process for obtaining sanitary registrations for foods, medicines, and health products from the Dominican government have resulted in higher operating costs and delays moving products to market, according to industry representatives. Furthermore, since April 2018, the General Directorate of Medicines, Food, and Health Products, which oversees the registration process, has been requesting declarations of product additives; a practice not established in Dominican health law. Industry representatives note that the Directorate of Medicines, Food, and Health Products' proposed solution (*i.e.*, requiring companies to present an affidavit to replace additives) would constitute an additional registration requirement.

SUBSIDIES

Under the CAFTA-DR, the Dominican Republic may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). The Dominican Republic does not have export promotion schemes other than tariff waivers for inputs imported by firms in the free trade zones. Under Law 139 of 2011, the Dominican Republic levies a 2.5 percent tax on goods sold from free trade zones into the local market.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anticorruption provisions in the CAFTA-DR apply, among other things, to government procurement.

Nevertheless, U.S. suppliers have complained that Dominican government procurement is not always conducted in a transparent manner and that corruption is a problem. The U.S. Government has engaged with the Dominican government on this issue and transparency has increased in its procurement system over the last few years. The United States will continue to monitor the Dominican Republic's government procurement practices in light of CAFTA-DR disciplines on government procurement.

The Dominican Republic is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2018, the Dominican Republic remained on the Watch List in the Special 301 Report. Despite a strong legal framework put in place to implement CAFTA-DR commitments, government agencies lack political will, resources, and trained personnel required for strong intellectual property rights (IPR) protection and enforcement. Positive developments include some limited efforts to address satellite signal piracy and a modest reduction in the large backlog of pending patent applications. Nevertheless, ongoing concerns include widespread satellite signal piracy, production and transit of counterfeit goods, widespread availability of pirated and counterfeit goods, government and private sector use of unlicensed software, and blanket administrative denials of requests for patent term adjustment. The United States will continue to work with the Dominican Republic to address these and other issues.

SERVICES BARRIERS

Telecommunications Services

The United States remains concerned that the telecommunications regulator in the Dominican Republic, INDOTEL, is not effectively carrying out its obligations under CAFTA-DR and the WTO General Agreement on Trade in Services. Specifically, the United States is concerned regarding the transparency of INDOTEL's process for the renewal of concession agreements and that dominant service suppliers do not charge termination rates that are above cost, which puts competitors and new entrants at a significant disadvantage. The U.S. is also concerned that the Dominican government's tax on carriers for international voice and SMS traffic to the Dominican Republic has the effect of raising termination rates above cost, which primarily affects U.S. and other foreign consumers. The United States continues to work with the

Dominican Republic to ensure that it fulfils its obligations for an open and competitive telecommunications sector.

OTHER BARRIERS

Bribery and Corruption

Many U.S. firms and citizens have expressed concerns that corruption in the government, including in the judiciary, continues to constrain successful investment in the Dominican Republic. Administrative and judicial decision-making at times is perceived by the public as inconsistent, nontransparent, and overly time-consuming. The CAFTA-DR contains strong public sector antibribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $973 million in 2018, a 37.5 percent decrease ($585 million) over 2017. U.S. goods exports to Ecuador were $5.8 billion, up 19.5 percent ($940 million) from the previous year. Corresponding U.S. imports from Ecuador were $6.7 billion, up 5.6 percent. Ecuador was the United States' 40th largest goods export market in 2018.

Sales of services in Ecuador by majority U.S.-owned affiliates were $1.0 billion in 2016 (latest data available), while sales of services in the United States by majority Ecuador-owned firms were $2 million.

U.S. foreign direct investment (FDI) in Ecuador (stock) was $779 million in 2017 (latest data available), a 24.8 percent decrease from 2016. U.S. direct investment in Ecuador is led by manufacturing, mining, and wholesale trade.

IMPORT POLICIES

Overview

Ecuador imposes a broad range of tariff and nontariff restrictions on trade in goods and services. This trend began several years ago, but accelerated in 2014 and 2015 as Ecuador’s balance of payments worsened and economic growth slowed. These measures, such as tariff surcharges implemented in March 2015 through 2017, contributed to sharply reduced U.S. exports to Ecuador. The measures also created uncertainty in Ecuador’s market, which discouraged investment, penalized Ecuadorian workers and businesses, and limited consumer choices of competitively priced, high-quality goods and services.

As part of its import policies, Ecuadorian officials sought commitments from companies to increase local production and decrease imports. According to Ecuador’s Coordinating Minister for Production, Employment, and Competitiveness, over 900 companies signed import substitution agreements with the government in 2014 and 2015. According to local importers, this policy seeking import substitution agreements was discontinued beginning in mid-2015, but many of the agreements remain in effect, though inactive.

The United States has objected to Ecuador’s restrictions on trade in a variety of fora bilaterally, through various WTO committees, for example, and in coordination with other countries. The current government has sought to improve the situation for importers, removing some regulations that hindered trade, and has announced its intentions to further roll back some of the trade distorting regulations imposed by the prior government. It has adopted a policy of gradual trade openness and has expressed its intention to negotiate trade agreements with the Pacific Alliance and the United States. In 2018, the United States and Ecuador held the first bilateral Trade and Investment Council (TIC) meeting in nine years, which provided a structured forum to discuss trade issues. Both sides committed to undertake the work necessary to resume the yearly schedule of TIC meetings with a view toward creating a more positive bilateral trade relationship. As the current government has been more open to discussing trade issues, the United States will engage with Ecuador to press for reversal of these policies in light of its international commitments.

Tariffs and Taxes

Tariffs

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent *ad valorem* or less, except for agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, to date, Ecuador has taken no steps to phase out use of the APBS. Ecuador's Most Favored Nation (MFN) applied tariff rate averaged 11.2 percent for industrial products and 18.3 percent for agricultural products in 2017 (latest data available). As a member of the Andean Community of Nations (CAN), Ecuador grants and receives exemptions from tariffs, *i.e.*, reduced *ad valorem* tariffs and no application of the APBS for products from the other CAN countries.

Taxes

Specific changes by sector in recent years include those described below.

Consumer Goods

COMEX Resolution 023, issued July 17, 2014, created a $42 fee on packages shipped via international courier. Consumers may receive no more than five packages per year, and each package must weigh less than four kilograms and be valued at less than $400, with a total value for all five packages not to exceed $1,200. COMEX Resolution 033, issued September 19, 2014, modified Resolution 023 to provide a waiver of the $42 fee for packages sent by Ecuadorian residents abroad, up to a limit of 12 packages or $2,400. According to Resolution CDE-EP-CDE-EP-2017-0012-R of the Empresa Pública Correos de Ecuador (Ecuadorian Post Office), dated September 15, 2017, all international online shipments up to 2,000 grams must pay a $3.51 fee plus a value-added tax (VAT).

Agricultural Products

Ecuador's continued use of the Andean Price Band System (APBS) affects many U.S. agricultural exports. U.S. exports such as wheat, barley, malt barley, and soybeans faced significantly higher total duties in 2018 than in previous years because of a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. Total duties, for example, might be as high as 45 percent for pork and 86 percent for chicken parts. The APBS has had a particularly adverse impact on soybean meal. In the past Ecuador granted a renewable two or three-year tariff exemption for imports of soybean meal. The last time the preference was scheduled to expire, on December 31, 2016, the exemption was renewed for another three-year period. However, the exemption was not renewed until near the end of 2016, creating uncertainty as to whether it would be renewed. Many importers in the domestic livestock and aquaculture industries in turn shifted purchases of soybean meal from United States suppliers to other country suppliers. South American trading partners appear to have benefitted due to the preferential market access they have with Ecuador, as their market share increased in 2017 and remained high in 2018. The United States has requested a permanent tariff exemption for wheat and soy and is advancing discussions through the TIC and other bilateral opportunities.

Nontariff Barriers

Import Bans/Restrictions

For a number of agricultural imports, the Ministry of Agriculture and Livestock (MAG) has established consultative committees to make recommendations on whether these products should be allowed for import into Ecuador. These committees are composed of private sector representatives and government officials. Originally conceived as advisory bodies for recommending production and agricultural development policies, these committees reportedly now seek to block imports to encourage domestic production.

Import Licensing

Enacted in June 2013, COMEX Resolution 102 and MAG Resolution 299-A imposed a mandatory, cumbersome process for allocating import licenses for 55 agriculture tariff lines including dairy, potatoes (including French fries), beef, pork, chicken, turkey, beans, sorghum, and corn. In November 2015, Ecuador replaced Resolution 299-A with Resolution 316, a more burdensome framework. Under Resolution 316, MAG's Undersecretary of Commercialization is vested with full authority to decide and administer the granting of non-automatic import licenses. After consulting with domestic producers, MAG allocates single import licenses on a per-shipment basis. In addition, some processed products which previously did not require a sanitary permit from Ecuador's SPS agency AGROCALIDAD, are subject to such unnecessary requirements. The United States has raised questions about these measures in light of Ecuador's WTO obligations.

Industry stakeholders report that the process for obtaining import permits is deliberately trade restrictive. A non-automatic issuance policy has been implemented that, due to the difficultly of obtaining import permits, incentivizes domestic sourcing of products at the expense of imported products. While all food and agricultural products are subject to this policy, beef, pork, and dairy products are particularly targeted. For these products, an importer's total import allowance cannot surpass an amount determined by MAG. For dairy products, MAG also requires that interested parties provide sales and consumption forecasts before it will authorize imports. The United States has expressed concern regarding Ecuador's import licensing process in light of the WTO Import Licensing Agreement.

Customs Barriers and Trade Facilitation

The National Customs Service of Ecuador (SENAE) issued a Resolution establishing the Customs Control Service Fee, effective on November 13, 2017, and on January 1, 2018, for postal and courier shipments. The charge, which was calculated by dividing the weight of the imported item in grams by an arbitrarily decided unit of control and then multiplying by $0.10, allowed SENAE to raise or lower the fees on individual items by manipulating the unit of control. The fee was removed on June 7, 2018, following an Andean Community ruling that it was a tax and not a fee. The Ministry of Finance noted that $24 million was collected during the seven months the customs fee was in effect.

Importers must register with SENAE to obtain a registration number for all products.

Ecuador has ratified the WTO Trade Facilitation Agreement, with the National Assembly voting to approve ratification on October 16, 2018. On February 14, 2019, Ecuador submitted its full implementation schedule to the WTO Secretariat, including detailed technical assistance requirements for Category C provisions.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Processed Foods–Quality Compliance and Prior Authorization Requirements

Ecuador imposes a variety of standards-related measures on certain types of processed food. Executive Decree No. 4522 of 2013 of the Ministry of Public Health's (MSP) National Agency for Regulation, Control, and Sanitary Surveillance, requires that all processed and packaged food products include a label with a set of colored bars indicating low, medium, or high content of salt, sugar, and fat. Although the government of Ecuador revoked in November 2018 a resolution, COMEX 116, that would require a certificate demonstrating compliance with the labeling provisions, it remains unclear what a transition phase will look like for labeling and conformity assessment of imported food and agricultural products. Implementation of this requirement reduced the imports of dozens of high value added food products from the United States, including preserved meat and vegetable products, jams, sauces, and other food products, because certification is more onerous for imports than for domestic products.

In addition, processed food products of animal origin require prior authorization from three government agencies within the Ministry of Agriculture and Livestock, including the animal and plant health authority AGROCALIDAD, the Undersecretary of Commercialization, and the Undersecretary of Livestock Development. For processed meat products, an assessment is conducted by both the Undersecretary of Commercialization and the Undersecretary of Livestock Development, resulting in unnecessary redundancy and delay. The United States will continue to work with Ecuadorian authorities to explore alternatives, including the use of state or federal Certificates of Free Sale, a Supplier's Declaration of Conformity, or a determination of equivalence with the Ecuadorian Service for Standardization's (INEN) requirements.

Footwear

Ecuadorian law (INEN 013) requires footwear companies to make a special label on every pair of shoes imported into Ecuador, including content information and an Ecuadorian tax ID number. U.S. footwear companies need to make production runs specifically for Ecuador, to attach labels to the shoe upper during manufacture or attach a label after manufacture. These requirements far exceed typical local language labeling requirements. In 2017 this requirement was modified to require sewn labels to include only the material composition (percentage), country of origin, and safety instructions. For all other labeling requirements an adhesive tag suffices. Ecuador is working with other CAN members to issue a regional labeling policy for footwear, apparel, and accessories, among others, based on international standards.

Sanitary and Phytosanitary Barriers

Agricultural Products Quality Compliance and Prior Authorization Requirements

Ecuador maintains a lengthy and burdensome sanitary certification process, which may require several different approvals for a single product. COMEX Resolution 116 requires all agricultural imports to be accompanied by an import permit issued by AGROCALIDAD. For over 50 food and agricultural products, Ecuador also requires prior import authorization from MAG or the MSP, or both, depending on the particular product. The MAG authorization itself requires several internal approvals. Ecuador's prior authorization system is subject to lobbying by domestic producers seeking to block or impede imports.

In addition to prior authorization, COMEX Resolution 019 mandates that imported agricultural products must be accompanied by a sanitary certificate or be shipped from a plant that AGROCALIDAD has previously inspected and authorized. This requirement applies to all imported agricultural products, including products of animal origin that are not considered to present a high food safety risk in the United States.

Establishment of Registration Requirements

AGROCALIDAD Resolution 217 of 2016 requires registration of foreign establishments that export animals or animal products to Ecuador. Although Ecuador notified this measure to the WTO, no time was allowed for trading partners to review and provide comments prior to the measure entering into force. This resolution is problematic for U.S. exporters because some of the information needed to register is proprietary and not customarily required for export to other countries. In all cases, AGROCALIDAD reserves the right to request a site inspection with costs covered by the party interested in exporting to Ecuador.

GOVERNMENT PROCUREMENT

Ecuador is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

Ecuador is subject to government procurement disciplines in the Trade Agreement between the European Union and its Member States and Colombia, Peru, and Ecuador, following its accession on January 1, 2017.

Bidding on government procurement can be cumbersome and nontransparent. The lack of transparency poses a risk that procuring entities will administer the process to the advantage of a preferred supplier. For example, public enterprises have broad flexibility to make procurements. Ecuador's Public Procurement Law establishes exceptions for procurements made according to special rules established by presidential decrees, for exploration and exploitation of hydrocarbons, for emergency situations, and for national security contracts. Article 34 of the Public Procurement Law allows public enterprises to follow special procurement rules, provided the National Public Procurement Service issues an open-ended authorization for purchases considered within "the nature of the enterprise."

Ecuador also requires that preferential treatment be given to locally produced goods, especially those produced under the framework of the constitutionally created "social and solidarity economy," as well as micro and small enterprises.

Foreign bidders are required to register and submit bids for government procurement through an online system. Foreign bidders must have a local legal representative in order to participate in government procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador remained on the Special 301 Watch List in 2018. Enforcement of intellectual property (IP) against widespread counterfeiting and piracy remains weak. With respect to the pharmaceutical and agricultural chemical industries, Ecuador does not appear to adequately protect against the unfair commercial use or the unauthorized disclosure of undisclosed–test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products.

On August 22, 2016, Ecuador issued a Presidential Decree 1159 to amend Presidential Decree 522, which affects the labeling of off-patent medicines. Stakeholders were concerned that Presidential Decree 1159 might prejudice the legitimate interests of affected trademark holders and added an additional labeling requirement to batches sent to Ecuador. Decrees 1159 and 522 were repealed on May 4, 2018, by Presidential Decree 385, resolving the labelling issue.

The Code of the Social Economy of Knowledge, Creativity, and Innovation (COESC), also known as the Ingenuity Code, that contains legislation covering multiple intellectual property matters, entered into force on December 9, 2016. In 2018, the Ecuadorian National Intellectual Property Service (SENADI) (formerly the Ecuadorian Institute of Intellectual Property (IEPI)), published for public comment draft regulations related to the COESC. While the draft regulations did address some concerns, U.S. stakeholders continue to express concerns that the COESC legislation could negatively affect intellectual property protections and foreign investment in Ecuador.

The United States has engaged with Ecuador on IP issues, including with respect to the COESC draft regulations, and will continue its engagement through the Special 301 process and the Trade and Investment Council.

SERVICES BARRIERS

Financial Services

The 2018 Productive Development Law liberalizes and clarifies the rules for private credit rating services. However, the Monetary and Financial Policy Board has not completed implementation of these provisions, and has not provided guidance. As a result, the Superintendent of Banks continues to apply more restrictive regulations to private credit reporting bureaus than those provided in the new law.

Telecommunications Services

Article 34 of Ecuador's Organic Telecommunications Law requires telecommunications and subscription television service suppliers with at least a 30 percent market share to pay 0.5 percent of their revenue to the government and an additional 1 percent of their revenue for each additional 5 percent market share they hold above 30 percent. However, Corporación Nacional de Telecomunicaciones (CNT), which is owned by the government, is not included in the calculation of market share and is exempt from the fees. CNT is the dominant provider of fixed telecommunications services, and is the second largest supplier of subscription television services. With CNTs exemption, DirectTV is currently the only company that meets the market share requirement at 35 percent and does pay. In addition to the fee exemption, the government of Ecuador maintains policies that favor CNT over other competitors, including exemptions from paying certain license taxes and fees.

INVESTMENT BARRIERS

Limits on Foreign Equity Participation

Ecuador's investment climate remains marked by uncertainty, owing to unpredictable and frequently restrictive economic policies. The current government, which took office in May 2017, has said it intends to address these concerns.

Withdrawal from Bilateral Investment Treaties (BITs)

U.S. investors complained, during 2017 and in previous years, that Ecuador had failed to comply with the terms of the United States-Ecuador BIT, including with respect to compliance with arbitral decisions under the agreement. On May 3, 2017, Ecuador's National Assembly voted to terminate 12 of the country's bilateral investment treaties, including its agreement with the United States. The move was attributed to a conflict with Ecuador's 2008 Constitution, which prohibits Ecuador from entering into treaties that cede sovereign jurisdiction to international arbitration entities outside of Latin America in contractual or commercial disputes between Ecuador and individuals or private companies. The United States-Ecuador BIT terminated on May 18, 2018, though the sunset provisions of the U.S. agreement will protect current investors for 10 years following the date of termination.

Other Investment Barriers

Regulations and laws since 2007 limit private sector participation in sectors deemed "strategic," most notably in the extractive industries. In 2010, the Ecuadorian government enacted a hydrocarbons law that required all contracts in the extractive industries to be in the form of service, or "for fee" contracts, rather than production sharing agreements. After the fall in global oil prices in mid-2014, the Ecuadorian government began relaxing its extractive industries regulatory framework to attract foreign investment in the petroleum and mining sectors. In July 2018, the government issued Presidential Decree 449, which allowed for production sharing contracts, with certain limitations. The government has already offered one set of eight blocks under this model (Ronda Intracampos I), with plans for others in 2019.

The 2015 Mining Law allows the state to grant mining exploitation rights to private and foreign entities, depending on national interests. Between 2015 and 2017, the government established non-discriminatory incentives for mining sector investments, including fiscal stability agreements, limited VAT reimbursements, and remittance tax exceptions.

Ecuador's National Assembly approved a public-private partnership law on December 15, 2015, intended to attract investment. The law allows increased private participation in some sectors and offers incentives, including the reduction of income tax, VAT, and capital exit tax for investors in certain projects. No U.S. firms have indicated that they have signed a public-private partnership agreement with the Ecuadorian government since passage of the law.

OTHER BARRIERS

Many U.S. firms and citizens have expressed concerns that corruption among government officials and the judiciary can be a hindrance to successful investment in Ecuador.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $2.6 billion in 2018, a 9.3 percent increase ($220 million) over 2017. U.S. goods exports to Egypt were $5.1 billion, up 26.7 percent ($1.1 billion) from the previous year. Corresponding U.S. imports from Egypt were $2.5 billion, up 51.6 percent. Egypt was the United States' 45th largest goods export market in 2018.

Sales of services in Egypt by majority U.S.-owned affiliates were $1.1 billion in 2016 (latest data available), while sales of services in the United States by majority Egypt-owned firms were $5 million.

U.S. foreign direct investment (FDI) in Egypt (stock) was $9.4 billion in 2017 (latest data available), a 25.5 percent decrease from 2016.

IMPORT POLICIES

Tariffs

Egypt’s Most Favored Nation (MFN) applied tariff rate averaged 7 percent for agricultural products and 50 percent for non-agricultural products in 2018. Egypt’s simple average WTO bound tariff rate is significantly higher at 98.3 percent for agricultural products and 27.5 percent for non-agricultural products. Egypt’s maximum WTO bound tariff rate for all products is 36.5 percent.

On September 11, 2018, Egypt raised tariffs on 5,791 products through Presidential Decree 419/2018. Also through this Decree, Egypt reduced tariffs on several medicines and imported natural gas vehicles, and eliminated duties on electric cars. While the new tariffs are within Egypt’s WTO bound rates, they exacerbate the disadvantage U.S. products face in Egypt vis-à-vis European Union (EU) goods given that such EU products benefit from preferential rates granted under the European Union-Egypt Free Trade Agreement.

Egypt still maintains high tariffs on a number of critical U.S. export products. Egypt’s tariff on passenger cars with engines with 1,600 cubic centimeters (cc) or less is 40 percent, and its tariff on cars with engines of more than 1,600 cc is 135 percent. Tariffs on a number of processed and high-value food products, including poultry, meat, apples, pears and cherries, range from 20 percent to 30 percent. There is a 300 percent tariff on alcoholic beverages for use in the tourism sector plus a 40 percent sales tax. The tariff on alcoholic beverages for use outside the tourism sector ranges from 1,200 percent on beer to 1,800 percent on wine to 3,000 percent on sparkling wine and spirits, effectively ensuring that these beverages are comprised of foreign unrefined inputs that are reconstituted and bottled in Egypt. Foreign movies are subject to tariffs amounting to 46 percent. They are also subject to sales taxes and box office taxes higher than those for domestic films.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Egypt’s customs authority has not yet implemented modern information technology systems, making it difficult for it efficiently to target suspect shipments for inspection. The delay in implementation affects the customs authority’s capability to process manifests and entry documentation, including those for customs valuation. The lack of automated manifest collection and internal coordination, in addition to inefficient inspection procedures, has resulted in significant customs processing delays. In addition, Egypt's practice of consularization, which requires exporters to secure a stamp from Egyptian consulates on all documentation for goods exported to Egypt (at a cost of $100 to $150 per document), adds significant costs in money and time to such exports. Egyptian Customs also employs reference pricing when assessing duties. The U.S. Government has raised and will continue to raise these U.S. business concerns.

In December 2015, Egyptian Decree 991/2015 took effect governing preshipment inspection requirements administered by Egypt's Ministry of Trade's General Organization for Export and Import Control (GOECI). However, Egypt has not notified the decree despite being subject to Article 5 of the WTO Agreement on Preshipment Inspection. Since May 2017, the United States has continued to request Egypt notify Decree 991/2015 to the WTO Committee on Customs Valuation (G/VAL/W/299).

In June 2017, Egypt's Parliament endorsed Presidential Decree No. 149/2017 ratifying the WTO Trade Facilitation Agreement, which is expected to expedite the movement of goods across its borders and improve customs cooperation. However, Egypt has yet to officially deposit the instrument of ratification to the WTO. Although Egypt has yet to ratify the TFA, it has availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Egypt has submitted its Category A notification, but has not notified the remaining commitments to the WTO Secretariat. Egypt should have notified its definitive dates for Category B commitments by February 2018. Additionally, Egypt notified one of the four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

Import Licensing

Either the National Nutrition Institute or the Drug Planning and Policy Center of the Ministry of Health and Population (MoHP) must register and approve all nutritional supplements, specialty foods, and dietary foods. Importers must apply for a license to import specialty food products and renew the license every one to five years, at a cost of up to $1,000 per renewal, depending on the product. While there is no law that prohibits the importation of nutritional supplements in finished pill form, import licenses for these products are not provided.

The MoHP must approve the importation of new, used, and refurbished medical equipment and supplies. The MoHP approval process consists of a number of steps, which some importers have found burdensome. Importers must submit a form requesting the MoHP's approval to import, provide a safety certificate issued by health authorities in the country of origin such as the U.S. Food and Drug Administration (FDA), and submit a certificate of approval from the U.S. FDA or the European Bureau of Standards. The importer also must present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that the equipment is new. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

U.S. vehicle and automotive parts exports face significant barriers in Egypt, and U.S. exports declined by 44 percent since 2015. Since June 2014, Egypt has applied European Union (EU) regional emissions and safety standards for vehicles and automotive parts. This has made it difficult to export U.S. vehicles and parts built to U.S. Federal Motor Vehicle Safety Standards (FMVSS) to the Egyptian market. Further, Egypt is only enforcing these standards for imports. Another restrictive element of Egypt's law prohibits the importation of used vehicles for commercial purposes.

The United States is seeking to address the decline in U.S. exports by encouraging Egypt to accept U.S. FMVSS emissions and safety standards for vehicles. After persistent engagement by the United States, in May 2018 Egypt indicated to USTR that it is willing to allow imports of U.S. vehicles and automotive parts if Egypt can overcome its legal and standards concerns. The problem centers on Egypt's unwillingness to recognize and conform to the "self-certification" system under the U.S. FMVSS. The U.S. Government is providing technical assistance to assist Egypt in working through its legal standards concerns.

Ban on Poultry Parts and Poultry Offal

Since 2003, Egypt has imported poultry from all origins, but has only permitted imports of whole, frozen birds, banning imports of poultry parts and offal. Although Egypt's General Organization for Veterinary Services (GOVS) inspected and approved 22 U.S. poultry establishments for export to Egypt in September 2013, and certified that U.S. slaughtering processes and food safety measures are in accordance with halal practices, Egypt continues to cite Islamic halal slaughter concerns as the reason for the ban on U.S. poultry parts and poultry offal. The United States raised this issue at the December 2017 Trade and Investment Framework Agreement (TIFA) meeting in Cairo, at the TIFA follow-up meeting in May 2018, and again at the WTO Technical Barriers to Trade Committee meeting in 2018.

Foreign Manufacturers Registration

Egyptian Decree 43/2016, in effect since March 16, 2016, requires foreign entities that export finished consumer products to Egypt, *e.g.*, dairy products, furniture, fruits, textiles, confectioneries, and home appliances, to register their trademarks with Egypt's General Organization for Exports and Imports Control (GOEIC). Egypt does not allow imports of goods from nonregistered entities. Despite Egypt's announcement at the December 2017 TIFA meeting that all U.S companies in the registration queue had been approved, U.S. companies are concerned about a lack of transparency in the process. A small number of U.S. companies are still pending registration. Registration can take up to 18 months, adding costs and uncertainty to the export process and, over time, may discourage exports to Egypt. The United States raised these concerns with Egypt multiple times in 2017 and most recently at the May 2018 TIFA follow-up meeting in Washington.

Sanitary and Phytosanitary Barriers

In recent years, the Egyptian government has made limited progress in taking a more scientific approach to sanitary and phytosanitary (SPS) measures. However, importers of U.S. agricultural commodities continue to face unwarranted barriers. Animal products, including beef and dairy products, face the greatest risks of rejection at port, given that Egypt does not adopt many international standards for all animal-based products. Egypt also blocks the import of certain U.S. agriculture products based on Egypt's claims regarding health and food safety. In addition to these barriers, Egypt also maintains other non-tariff measures based on religious requirements or bureaucratic procedures.

Agricultural Biotechnology

Since March 2012, an Egyptian Ministry of Agriculture and Land Reclamation decree has suspended the cultivation of corn seeds developed through agricultural biotechnology. The initial suspension followed media reports critical of agricultural biotechnology products.

Seed Potatoes

The United States remains unable to export seed potatoes to Egypt because the Ministry of Agriculture's Central Administration for Plant Quarantine (CAPQ) has failed to provide the United States with an official designation of approved origin for exporting seed potatoes. According to the Ministry of Agriculture's regulations, CAPQ approves origins only after completing a pest risk analysis. While the pest risk analysis for U.S. seed potatoes was completed over two years ago, Egypt continues to delay approval of the United States as an origin for exporting seed potatoes to Egypt.

GOVERNMENT PROCUREMENT

In July 2018, the Egyptian Parliament passed a new law on government procurement (No. 182). The new law and its regulations require procurement decisions be made in a competitive and transparent manner and meet not only technical factors and price but also sustainable development goals. As with the prior procurement law, Egyptian small and medium-sized enterprises are given the right to obtain up to 20 percent of available government contracts annually.

Egypt is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Egypt remained on the Watch List in the 2018 Special 301 Report. While Egypt has taken steps to improve intellectual property (IP) enforcement, concerns remain with the widespread use of pirated and counterfeit goods, including software, music, unlicensed satellite TV broadcasts, and videos. Deterrent-level penalties for IP violations, *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border, and additional training for enforcement officials would enhance the IP enforcement regime in Egypt. Also, the lack of transparent and reliable systems for processing trademark and patent applications remain obstacles for growth of U.S. IP exports. Finally, the United States continues to urge Egypt to clarify its protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. In information technology-related industries, Egypt requires that 60 percent of senior executives be Egyptian citizens within three years of the startup date of the venture.

Financial Services

Foreign banks are able to buy shares in existing banks, but are not able to secure a license to establish a new bank in Egypt. New commercial banking licenses have not been issued to foreign banks since 1979. Three state-owned banks (Banque Misr, Banque du Caire, and the National Bank of Egypt) control approximately 40 percent of the banking sector's total assets.

Telecommunications Services

The state-owned telephone company, Telecom Egypt, holds a *de facto* monopoly in fixed line telecommunications, primarily because the National Telecommunications Regulatory Authority has not approved additional telecommunications licenses. The lack of competition among internet service and fixed landline providers has contributed to high prices, low internet speeds, and poor service quality.

Express Delivery Services

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. In addition, although express delivery services constitute a separate, for-profit, premium delivery market, ENPO requires private express delivery operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms (approximately 44 lbs). ENPO imposes an additional fee on private couriers and express delivery services of 5 EGP ($0.30) on all shipments under 5 kilograms (approximately 11 lbs).

INVESTMENT BARRIERS

Egypt implemented an investment law (No. 72) in October 2017 to address longstanding complaints of foreign investors. The law now allows foreign investors to operate sole proprietorships and partnerships. In addition, the law relaxed local hiring requirements, allowing firms to increase the number of non-nationals working at any business from 10 percent of the work force to 20 percent. Further regulatory changes also allow foreigners to act as importers for their own businesses, albeit with some limitations on the items that can be imported and the purposes for which they can be imported.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $907 million in 2018, a 54.4 percent increase ($320 million) over 2017. U.S. goods exports to El Salvador were $3.4 billion, up 11.7 percent ($358 million) from the previous year. Corresponding U.S. imports from El Salvador were $2.5 billion, up 1.6 percent. El Salvador was the United States' 50th largest goods export market in 2018.

U.S. exports of services to El Salvador were an estimated $1.1 billion in 2017 (latest data available) and U.S. imports were $742 million. Sales of services in El Salvador by majority U.S.-owned affiliates were $1.2 billion in 2016 (latest data available).

U.S. foreign direct investment (FDI) in El Salvador (stock) was $3.0 billion in 2017 (latest data available), a 9.5 percent increase from 2016.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services, and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environment.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, El Salvador applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA-DR, as of January 1, 2015, 100 percent of originating U.S. consumer and industrial goods enter El Salvador duty free. Nearly all textile and apparel goods that meet the Agreement’s rules of origin also now enter El Salvador duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Eighty-five percent of U.S. agricultural product exports by product line are eligible for duty-free treatment in El Salvador under the CAFTA-DR as of 2018. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020, on rice, yellow corn, and chicken leg quarters by 2023, and on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities as the tariffs are eliminated, with the in-quota amount expanding during this time. The Salvadoran government is required under the CAFTA-DR to make TRQs available on January 1 of each year. El Salvador monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure Salvadoran issuance of these permits occurs in a timely manner.

Taxes

El Salvador, under its general alcoholic beverage law, assesses a specific excise tax on distilled spirits that is applied on a per-liter of alcohol basis, with four specific rates (currently $0.0325, $0.05, $0.09 and $0.16). The lowest rate applies only to *aguardientes*, a locally bottled spirit made from cane sugar. Whiskey, which is exclusively imported, is assessed at the highest rate. Arbitrary breakpoints based on the type of distilled spirit or tariff classification may result in a significantly lower tax rate on locally-produced spirits.

Nontariff Barriers

Customs Barriers and Trade Facilitation

All CAFTA-DR countries, including El Salvador, committed to improve transparency and efficiency in administering their customs procedures as part of the free trade agreement. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, agreed to share proposed measures with the public and the other CAFTA-DR countries for comment, and to share information with the other CAFTA-DR countries to combat the illegal transshipment of goods in circumvention of a country's customs laws.

Despite the obligation under the WTO Customs Valuation Agreement, El Salvador has not notified their national legislation or Checklist of Issues to the WTO Committee on Customs Valuation. The United States will continue to emphasize the importance of submitting both overdue notifications, which is integral to the successful implementation of the WTO Customs Valuation Agreement. Reviewing national legislation offers the opportunity to address recurring importer concerns about the implementation of the WTO Customs Valuation Agreement.

In 2013, the Salvadoran customs authority implemented nonintrusive inspections with x-rays at border crossings. These inspections have resulted in detection of anomalies, ranging from the trafficking of narcotics to the false declarations of goods. At the same time, while designed to facilitate cross-border movements, the procedures have resulted in considerable delays that cause financial losses to exporters and importers. In May 2018, the Legislative Assembly approved reforms to the Special Law on Customs Infractions (LEPSIA) to introduce a five percent margin of tolerance for quality, weight, volume, or value discrepancies of imports. The amendment also eliminates fines if the importer accepts and corrects any tax omissions. The private sector Inter-union Commission for Trade Facilitation (Cifacil) has been promoting the implementation of measures to streamline trade, but has not made much progress despite years of engagement with the government.

In July 2018, El Salvador's Legislative Assembly approved the country's incorporation into the Customs Union established by Guatemala and Honduras in June 2017. El Salvador is moving into the operational phase, which includes working to harmonize regulations and procedures, integrate border posts, establish interconnectivity between automated systems, and train customs officials on the new procedures. Technical-level working groups continue to meet. Implementation of the Customs Union is expected to take between 12 to 18 months. Any resulting customs legislation changes must be notified to the WTO Committee on Customs Valuation.

In 2015, El Salvador's Legislative Assembly approved amendments to the Customs Simplification Law, which included imposing a $18 per-shipment processing fee for incoming packages and cargo. In response to industry concerns, in January 2018, the Legislative Assembly approved an amendment to allow an "accumulated merchandise declaration" to allow imports and exports of up to 25 samples in a single declaration and pay $18 for a single non-intrusive inspection. Despite the amendment, the private sector continues to complain about Customs' implementation of procedures related to the import of samples. The United States continues to monitor implementation and offers technical assistance as needed.

In June 2018, El Salvador enacted new reforms to impose a 24-hour deadline to conduct non-intrusive inspections and reduce the previous statutorily mandated time to clear goods through customs from 48 to 24 hours. The amendments also reduce the statutory time limit for the administrative procedures to determine duties and taxes from 20 days to 12 days (eight days to issue a final resolution and four days to notify parties).

El Salvador ratified the WTO Trade Facilitation Agreement (TFA) in July 2016 and availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. El Salvador notified two of four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

El Salvador requires a "Certificate of Free-Sale" to register food products. The Ministry of Health has agreed to accept the Food Safety Inspection Service (FSIS) 9060-5 certificate for meat and meat products in lieu of the Certificate of Free-Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate (health certificate) for U.S. meat and meat products. Obtaining a health certificate for the purpose of food product registration is problematic as this document only accompanies actual shipments of meat or processed meat products. These shipments cannot occur until the food product is registered. Under the CAFTA-DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, making this requirement unnecessarily burdensome to U.S. exports.

In 2015, El Salvador issued the implementing regulation for the Act for the Promotion, Protection and Support of Breast Feeding, which defines requirements for sanitary registration, restricts marketing and advertising, and sets out labeling requirements for breast milk substitutes. This measure was published and entered into force in 2015, without notification to the WTO, and lacks clarity as to what information must appear on the label. At least one U.S. company doing business in El Salvador has expressed concerns about the measure. The United States is monitoring the implementation of the measure and has requested El Salvador notify it to the WTO Technical Barriers to Trade Committee to allow WTO Members a comment period and reasonable interval for implementation.

Sanitary and Phytosanitary Barriers

Since 2015, animal product exporting facilities are subject to MAG inspection and certification every three years. As the CAFTA-DR provides equivalence for the U.S. beef, pork, and poultry inspection systems, the inspection and certification requirements only apply to U.S. animal products not covered by the equivalence agreement such as pet food and pet food additives or probiotics. After several extensions, MAG began applying this measure to imports in November 2017. The U.S. Government will continue discussions with MAG to allow imports of U.S. products based on broader recognition of U.S. inspection programs, rather than requiring plant-by-plant inspection.

El Salvador does not distinguish between low- and high-risk products. Therefore, extensive laboratory tests are mandatory for all new food products, even for those low-risk products that would be permitted into other markets without testing. These testing requirements also apply to samples. To register product samples, the Ministry of Health requires large quantities of the product for testing, including samples of each different flavor of the same product. In February 2017, the Ministry of Health notified companies that laboratory testing must be conducted at the Ministry's laboratory, rather than private laboratories, resulting in a backlog in processing new product registrations.

SUBSIDIES

Export Subsidies

El Salvador instituted a Free Trade Zone Law in 2013, which grants tax credits based on the number of workers employed and investment levels.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods).

GOVERNMENT PROCUREMENT

The CAFTA-DR contains disciplines on government procurement. The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurements covered by the Agreement. In accordance with the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Salvadoran government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. The anticorruption provisions in the CAFTA-DR apply *inter alia* to government procurement.

El Salvador is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, El Salvador undertook legislative reforms providing for stronger IPR protection and enforcement. Despite these efforts, trafficking in counterfeit products remains high, as does music and video piracy. The United States has expressed concern about the unlicensed use of software as well as cable and satellite signal piracy. The United States continues to monitor El Salvador as it implements reforms to its copyright law related to collective management organizations that were enacted in 2017. The United States also remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of test data and other data generated for pharmaceutical products. The effectiveness of the intellectual property system to address patent issues expeditiously in connection with applications to market pharmaceutical products is unclear. The United States is engaging El Salvador to ensure geographical indication (GI) protections do not negatively impact the existing rights and market access of U.S. stakeholders. The United States will continue to monitor El Salvador's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications Services

In October 2015, the Legislative Assembly passed the Law of Special Contribution for Citizen Security and Coexistence (CESC), which imposed a special tax of five percent on fixed and mobile telecommunications services, pay television services, fixed and wireless Internet access services, and the transfer and import of telecommunications equipment. The proceeds of these taxes are to be used to fund government security initiatives. The tax has been challenged in Salvadoran court as unconstitutional "double taxation" and is pending review by the Supreme Court. The CESC is still being applied while the case is pending. The United States continues to monitor this issue.

INVESTMENT BARRIERS

The Millennium Challenge Corporation (MCC) is working with the Salvadoran government to systematically improve the ease and cost of doing business in El Salvador. The Salvadoran government created a new public entity, the Regulatory Improvement Organization (OMR), to improve regulations and processes in areas such as public administration, foreign trade and public-private infrastructure investment. The first reforms package, which included critical regulatory reform to El Salvador's Commercial Code, was accepted and adopted by executive entities in September 2017. In addition, the Salvadoran government unveiled changes to its online business registration portal designed to give entrepreneurs a one-stop shop for registering new companies. Specifically, the online site allows new business entrepreneurs the ability to formalize registration within three days and complete administrative procedures using the online platform.

OTHER BARRIERS

Bribery and Corruption

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and time-consuming. Bureaucratic requirements reportedly have at times been excessive and unnecessarily complex with significant variation in their application and interpretation. The CAFTA-DR contains strong public sector antibribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

The Legislative Assembly does not publish draft legislation on its website and does not have a standardized means of soliciting comments on pending legislation. OMR, along with USAID and the Institute for Access to Public Information, has launched a public notice and comment mechanism for proposed regulatory changes. The notice and comment mechanism is voluntary for government ministries.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $866 million in 2018, a 47.9 percent increase ($280 million) over 2017. U.S. goods exports to Ethiopia were $1.3 billion, up 49.4 percent ($434 million) from the previous year. Corresponding U.S. imports from Ethiopia were $445 million, up 52.6 percent. Ethiopia was the United States' 74th largest goods export market in 2018.

TRADE AGREEMENTS

Ethiopia is a member of Common Market for Eastern and Southern Africa (COMESA), a regional economic bloc, which has 19 member countries. As part of its COMESA membership, Ethiopia has introduced a 10 percent tariff reduction on goods imported from member states. However, Ethiopia has not yet joined the COMESA free trade area. Ethiopia signed the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ethiopia’s average MFN (most favored nation) applied tariff rate is 17.4 percent. Ethiopia’s MFN applied tariff rate averaged 22.1 percent for agricultural products and 16.6 percent for non-agricultural products in 2015 (latest data available). High tariffs insulate priority sectors of the economy, such as textiles and leather, from outside competition and limit U.S. participation in the market.

Taxes

Imports into Ethiopia are subject to an excise tax, sur taxes, and a 15 percent value-added tax (VAT). Excise taxes are levied on selected domestically produced and imported goods, and range from 10 percent for textiles and most other goods, to as high as 100 percent for alcoholic beverages. A VAT is imposed on most imported items, however some products and services are exempted from VAT. These exempted areas consist of financial services, educational services, healthcare, and transportation services. All goods imported into the country are subject to a 10 percent sur tax, with the exception of fertilizer, petroleum, investment goods, raw materials, and some medicines.

Nontariff Barriers

An importer must obtain a letter of credit for the total value of an import transaction and apply for an import permit before an order can be placed. Even with a letter of credit, however, import permits are not always granted, and there can be delays for several months before an importer is allocated foreign exchange.

The Ministry of Trade and Industry has the power to restrict and/or limit imports and exports. There are restrictions on importing used clothing; arms and ammunitions (except by the Ministry of Defense); and goods of a commercial nature and quantity that are not imported through formal bank payment mechanisms.

Foreign Exchange Controls

The Central Bank of Ethiopia (known locally as the National Bank of Ethiopia, or NBE) administers a strict foreign currency control regime, and the local currency (the Ethiopian birr) is not freely convertible. All imports, exports, and outgoing foreign payments require a foreign exchange permit. Ethiopian commercial banks are licensed to issue these permits, except for coffee. Private banks are required to manage their foreign exchange transactions through correspondent banks. The central bank carefully monitors the foreign exchange holdings of these banks and closely manages the exchange rate. For the past six years, the central bank has allowed five to six percent depreciation of the domestic currency per year. The central bank unexpectedly devalued the domestic currency by 15 percent in early October 2017, following a serious foreign currency shortage. The central bank has allowed exporters, foreign investors, and domestic investors that generate foreign currency to acquire external loans and suppliers' credit upon prior registration and approval by the bank. Larger firms, state-owned enterprises, and businesses that import goods prioritized by the government's development plan, as well as priority manufacturing export sectors (textiles, leather, and agro-processing), and emergency food importation generally have priority access to foreign exchange. Despite priority status, they too are affected by the chronic foreign exchange shortage in the economy. In comparison, investors in non-priority sectors and less well-connected importers, particularly smaller, new-to-market firms, face long delays in arranging trade-related payments. On occasion, they may never be allocated any foreign currency at all. The unreliability of foreign currency supply in Ethiopia's banks hampers the ability of all manufacturers to import and restricts repatriation of profits.

Customs Barriers and Trade Facilitation

Ethiopia is not a WTO Member, and therefore has not ratified the WTO Trade Facilitation Agreement.

Logistics backlogs occur regularly, in part because the customs process remains paper-based, and also because of structural inefficiencies. Private sector contacts reported that logistics costs comprise approximately 22 to 27 percent of the product cost. Other contacts allege that shipping and freight costs are approximately 60 percent higher than in neighboring countries. Equally important, 95 percent of the land-locked country's foreign trade passes through a single port in neighboring Djibouti, the Port of Djibouti, which has incomplete infrastructure projects that contribute to the delays in the movement of goods from the container, dry goods, and oil terminals to overland transportation.

SANITARY AND PHYTOSANITARY BARRIERS

In August 2015, an amendment to the Biosafety Proclamation established a legal framework to support the cultivation of genetically engineered crops. The government subsequently revised the proclamation's implementing directives to specify requirements for introducing GE cotton, and conducted successful field trials. In May 2018, the Ethiopian Ministry of Environment approved Bt cotton – the country's first GE crop – for cultivation. Planting is expected to begin in 2019, pending availability of imported seed. At the same time, the Environment Ministry authorized confined field trials for drought-tolerant and insect-resistant maize. The Ethiopian government is currently carrying out Bt maize field trials. Meanwhile, stakeholders have reported that the approval process for commercial imports of GE grains and oilseeds for food and feed remains overly burdensome. Imports of processed food products, including soybean and corn oils, and breakfast cereals made from GE ingredients are subject to mandatory labelling requirements. Food aid shipments that may contain GE ingredients are exempted from this regulation.

GOVERNMENT PROCUREMENT

Tender announcements are usually public, but a number of major procurements do not go through a transparent tendering process. Complicated and lack of established procedures, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections pose obstacles to foreign participation in government procurement. At least one large U.S. company, for instance, has seen a large, multi-million contract with the government abruptly modified, with little explanation and no apparent due-process. Another obstacle is the frequent requirement for potential suppliers to appear in-person to collect solicitation packages, which business associations complain creates an advantage for state-owned enterprises. U.S. firms have expressed concerns about the failure of procurement agencies to respect tender terms. However, at least one U.S. firm has successfully utilized the government appeals process to reverse an unfair tendering decision.

Ethiopia is not a WTO Member, and therefore is not a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Inadequate intellectual property (IP) protection and enforcement remains a serious concern in Ethiopia. While Ethiopia is a member of the World Intellectual Property Organization and has demonstrated an interest in strengthening its IP rights regime, it has not joined most of the major international IP treaties. Trademark infringement, especially in the hospitality and retail sectors, continues to be concerning. Given the lack of enforcement capacity and coordination amongst Ethiopian government agencies, IP enforcement is unpredictable. The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration and arbitration of IP cases, but action to combat the sale of pirated works remains inadequate. Also, the government of Ethiopia does not publicly track seizures of counterfeit goods, so no statistics are available.

SERVICES BARRIERS

Financial Services

Ethiopia’s investment code prohibits foreign investment in the financial service industry, including banking and insurance. Foreign nationals of Ethiopian origin who own bank shares, even if purchased while they were Ethiopian citizens, have been required to surrender their shares at par value. The banking sector is composed of 16 private commercial banks and two public banks. Financial transactions are predominately in cash. Ethiopia’s Automatic Teller Machine network has expanded rapidly and has become accessible to customers of all banks and credit card holders, though there are frequent service interruptions due to the unreliable Internet network. In addition, agent-banking services tied to mobile phones have been introduced by several providers, and more than a million users of agent-banking services are registered. Few international banks maintain representative offices, and all trade financing must go through an Ethiopian bank. This creates significant challenges for foreign investors with offshore accounts. Following the 15 percent devaluation of the Ethiopian birr in 2017, NBE increased the minimum saving interest rate from five to seven percent, and limited the outstanding loan growth rate in commercial banks to 16.5 percent above the previous year. This has had the effect of limiting lending to business other than the export and manufacturing sectors. Moreover, banks are instructed to immediately transfer 30 percent of their foreign exchange inflow to an NBE account for local currency conversion. This hard currency is then used by the government to meet the strategic needs of the country, such as payments made to procure petroleum, fertilizers, or pharmaceuticals.

Insurance Services

The insurance and reinsurance industry in Ethiopia is closed to foreign companies and is highly regulated. It is characterized by limited product offerings that mostly focus on automotive insurance. Industry has also complained of measures requiring a proportion of each reinsurance policy to be ceded to local reinsurance companies.

Telecommunications Equipment and Services

The state-owned Ethio-Telecom maintains a monopoly on wired and wireless telecommunications services. It also owns and operates all of the cell phone towers in the country. Many multinational companies assert that the current low quality of service in Ethiopia impedes information transfer and general business operations. In June 2018, the government announced its intention to partially privatize Ethio-Telecom. Asset valuation of the company and other preparatory works are currently underway.

For companies and organizations whose operations are Internet-dependent or located in remote areas of the country, the government allows the use of Very Small Aperture Terminals (VSATs), but it does not allow the general public to use VSATs, which can facilitate satellite-based Internet access in rural or remote regions.

Logistics Services

Most goods continue to be transported by trucks to the Port of Djibouti; Ethiopia's government-owned trucking companies dominate the market, and the overall number of trucks is insufficient to meet demand. In November 2017, the Addis Ababa–Djibouti railway began operating on a very small scale, but currently is mainly transporting passengers. Plans to expand Ethiopia's rail systems beyond the Addis Ababa-Djibouti link have been finalized, but construction, except for the Awash–Mekele rail line, has not begun due to a lack of financing.

In September 2018, the government opened the logistics sector for foreign companies operating jointly with local partners holding minority shares. At the same time, the GOE approved the National Logistics Strategy, which permits the private sector to engage in multimodal transportation system to improve export competitiveness and efficiency. However, despite the change in legislation, private shippers and freight forwarders report they are still unable to engage in multimodal transportation. The recent political rapprochement with Eritrea, along with the GOE's recent purchase of a 19 percent share of Berbera Port in Somaliland, which is being developed by DP World, could also provide alternative routes to transport goods to markets, and should eventually improve logistics.

INVESTMENT BARRIERS

A number of formal and informal barriers impede foreign investment in Ethiopia. Investment in the telecommunications services and defense industries is permitted only in partnership with the Ethiopian government. Foreign investors are required to invest a minimum of $200,000 per project. For joint investment with a domestic partner, the investment capital requirement is lowered to $150,000. The banking, insurance, and micro-finance industries are restricted to domestic investors. Foreign investors also are barred from investing in a wide range of retail, wholesale, and service enterprises (*e.g.*, printing, non-specialized restaurants, retail trade and brokerage, transport services, forwarding and shipping agencies, broadcasting, and beauty shops). Some government tenders are open to foreign participation, but the process is not always transparent. Although not a legal requirement in joint-ventures with state-owned enterprises, some investors report informal requirements of up to 30 percent domestic content in goods or technology, or both. The current Ethiopian government has publically stated a desire to loosen the regulations on foreign investment in Ethiopia across a wide-range of industries – rhetoric that in and of itself is a dramatic change from the past – though it has not provided a detailed implementation plan or timeline.

All land in Ethiopia belongs to the state; there is no private land ownership and land cannot be collateralized. Land may be leased from local and regional authorities for up to 99 years. However, current land-lease regulations place limits on the duration of construction projects, allow for revaluation of leases at a government-set benchmark rate, place previously owned land ("old possessions") under leasehold, and restrict the transfer of leasehold rights.

ANTICOMPETITIVE PRACTICES

State-owned enterprises (SOEs) dominate major sectors of the economy. There is a state monopoly or state dominance in the telecommunications, power, banking, insurance, air transport, and shipping industries. SOEs have considerable advantages over private firms, such as expedited customs clearance processing. Ethiopian business owners and foreign investors complain of the lack of a level playing field when it comes to state-owned businesses. While there are no conclusive reports of credit preference for these entities, there are indications that they receive other benefits such as priority foreign exchange allocation, preferences in government tenders, and marketing assistance.

OTHER BARRIERS

Bribery and Corruption

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently solicited for bribes to secure business contracts. Both U.S. and other foreign companies complained that they were unfairly targeted for tax collection (compared to local companies) and presented with spurious tax bills. However, in 2018 the government arrested several dozen former military and intelligence officials, charging them with corruption and embezzlement allegedly committed during the procurement contracts for large government contracts.

Sporadic Conflicts

Ethiopia has faced repeated cycles of civil unrest, some of it violent, over the last three years. In October 2016, the Ethiopian government declared a state of emergency that lasted until August 2017. Despite the lifting of the state of emergency, discontent continued to simmer, leading to the resignation of the Ethiopian Prime Minister Hailemariam Desalegn on February 15, 2018. The following day, the government re-imposed the state of emergency. On April 2, the House of Peoples' Representatives (lower chamber of Parliament) elected Dr. Abiy Ahmed Ali as the new Prime Minister. The state of emergency was then lifted on June 5, 2018.

Since April 2018, sporadic ethnic conflicts have erupted in various parts of the country, including Oromia, Benishangul Gumuz, Southern Ethiopia, Amhara, and the Ethiopian Somali Regions. Hundreds have lost their lives, and close to two million people have become internally displaced. These conflicts also led to the damage and destruction of a number of businesses, as well as the disruption of transportation and transit of goods in affected regions.

Judiciary

Companies that operate businesses in Ethiopia assert that the judicial system remains underdeveloped and inadequately staffed, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and the scheduling of cases often faces extended delays. Contract enforcement remains weak, though Ethiopian courts will at times reject spurious litigation aimed at contesting legitimate tenders. Ethiopia has not yet ratified key international arbitration agreements, such as the New York Convention, though the government has publicly stated that ratification is under consideration. Ethiopia is in the process of reforming the country's Commercial Code to bring it in line with international best practices. The draft legislation appears to address many concerns raised by the business community, including a proposal to introduce a commercial court under the regular court system to improve resolution of commercial disputes.

EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with European Union was $169.3 billion in 2018, an 11.8 percent increase ($17.9 billion) over 2017. U.S. goods exports to European Union were $318.6 billion, up 12.5 percent ($35.4 billion) from the previous year. Corresponding U.S. imports from European Union were $487.9 billion, up 12.3 percent.

U.S. exports of services to the EU were an estimated $243.4 billion in 2017 (latest data available) and U.S. imports were $192.0 billion. Sales of services in European Union by majority U.S.-owned affiliates were $669.4 billion in 2016 (latest data available), while sales of services in the United States by majority European Union-owned firms were $510.5 billion.

U.S. foreign direct investment (FDI) in the EU (stock) was $3.2 trillion in 2017 (latest data available), a 6.7 percent increase from 2016.

OVERVIEW

The United States and the Member States of the European Union (EU) share the largest economic relationship in the world. Trade and investment flows between the United States and the EU are a key pillar of prosperity on both sides of the Atlantic. Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged $5.3 billion per day in 2017 (latest data available), and the total stock of transatlantic investment was $5.6 trillion in 2017.

U.S. exporters and investors nonetheless face persistent barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. These barriers have contributed to annual U.S. trade deficits with the EU. This report highlights some of the most significant barriers that have endured despite repeated efforts at resolution through bilateral consultations or WTO dispute settlement. Certain barriers have been highlighted in this report for many years.

IMPORT POLICIES

Tariffs

The EU's applied Most Favored Nation (MFN) tariff rate averaged 5.1 percent in 2017 (latest data available). The average agricultural tariff rate is 10.8 percent, and the average non-agricultural rate is 4.2 percent. All of the EU's tariffs are bound at the WTO.

Although the EU's tariffs are generally low for non-agricultural goods, there are some high tariffs that affect U.S. exports, such as rates of up to 26 percent for fish and seafood, 22 percent for trucks, 14 percent for audio-visual equipment, 14 percent for bicycles, 10 percent for passenger vehicles, 10 percent for processed wood products, and 6.5 percent for fertilizers and plastics.

On June 20, 2018, the EU adopted tariffs ranging from 10 percent to 50 percent on a range of agricultural products, consumer products, and industrial products and materials imported from the United States, in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has urged the EU to work with the United Stated to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American farmers, workers, and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on July 16, 2018, the United States launched a dispute settlement proceeding against the EU in the WTO pertaining to the EU's retaliatory tariffs.

Nontariff Barriers

Non-Agriculture

Member State Measures: Pharmaceutical Products

U.S. pharmaceutical stakeholders have expressed concerns regarding several Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, such as therapeutic reference pricing and other price controls. Such lack of transparency and due process reportedly create uncertainty and unpredictability for investment in these markets and can undermine incentives to market and innovate further. These policies have been identified in several Member States, including Austria, Belgium, Cyprus, the Czech Republic, France, Hungary, Italy, Lithuania, Poland, Portugal, Romania, and Slovakia. Additional detail on some of these Member State policies is set out below. Pharmaceutical firms also have expressed concern regarding recent changes to European Medicines Agency (EMA) policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization. The United States continues to engage with the EU and individual Member States on these matters.

Austria: U.S. pharmaceuticals sales to Austria were worth over $917 million in 2017 (latest data available), comprising over 20 percent of U.S. goods exports to the country. For years, U.S. pharmaceutical companies have expressed concern regarding non-transparent decisions that fail to provide appropriate incentives for innovation decisions by the Austrian Social Insurance Carriers Association (HVB), which decides on reimbursement prices for most of Austria's pharmaceuticals. The United States will continue to monitor a system approved by Parliament in 2017 to ensure that it is implemented in a fair and transparent manner. The HVB also enforces a clawback agreement with all pharmaceutical producers and wholesalers, which requires a so-called "solidarity contribution" for the sector ($148 million in 2016, $68 million in 2017, and $57 million in 2018, subject to a growth-related calculation). In addition, the HVB negotiates clawbacks for individual products in order to further drive down the net price below the EU average, a *de facto* prerequisite to receiving reimbursement for prescribed drugs.

Belgium: Until 2015, U.S. pharmaceutical companies had repeatedly expressed concerns about the Belgian government's lack of adequate transparency in the decision-making process related to cost-containment measures in the pharmaceutical sector. This was largely overcome by the Pact for the Future, signed between Belgium's federal government and the pharmaceutical industry in July 2015. Still, the budget measures of the Pact are very strict, and additional savings measures beyond the ones foreseen in the Pact have been imposed.

Meanwhile, initiatives intended to lead to faster access of new innovative drugs have been incompletely implemented and at a slow pace. U.S. companies identified several tax-related measures, such as a 6.73 percent turnover tax, the 1 percent crisis tax, the 0.13 percent marketing tax, an orphan drug tax, and the clawback tax (an additional 3.22 percent of turnover in 2018), as exemplifying such concerns. The clawback tax system was changed in 2017, and is since then defined as 2.5 percent of the total reimbursable drug budget, instead of a fixed cap of €100 million ($113 million). This led to an increase of the clawback tax to €101.4 million ($114.8 million) in 2017 and €103.5 million ($117.2 million) in 2018. For 2018, the pharmaceutical companies will pay an estimated total amount of taxes of about €350 million ($396 million). The Belgian government revoked a plan to abolish a one percent crisis tax even though this was agreed upon in the Pact for the Future. In 2018, an additional amount of €158 million ($179 million) in savings was imposed in order to meet the budget projections set in the Pact, illustrating the too restrictive average annual budget growth of 0.5 percent foreseen in the Pact for the period 2015-2018. The United States continues to highlight the need for a continued dialogue with the government and meaningful opportunities for stakeholder input into budget and pricing decisions with the aim of safeguarding the access to the best treatment, including new innovative medicines, for Belgian patients.

Bulgaria: The first Bulgarian government e-health tender was fast-tracked in 2017 for hospital purchase of cancer pharmaceuticals and pharmaceuticals for other life-threatening and serious diseases, worth $518 million, but it is on hold pending litigation. U.S. companies have reported that the tender specifics were narrowly written to exclude some branded biotech medicine and included strict sanctions for products with shorter shelf life. After the initial launch, the tender was delayed by court proceedings, following several local bidders' complaints against specific provisions in the tender.

Czech Republic: While pharmaceutical approvals in the Czech Republic take longer than stipulated by the EU, U.S. firms report that the time required for such approvals has decreased. Despite this improvement, U.S. firms have concerns about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products. Specifically, they raise questions regarding the Czech government's practice of using the three lowest prices in a basket of countries (a group of 17 Member States as of January 1, 2018) to set maximum medicine prices. Pharmaceutical companies believe that using the average of the three lowest prices in the basket results in prices that are not adequate to incentivize research and development. The firms are pushing for these pricing decisions to be made transparently and include meaningful stakeholder input.

In early 2017, Czech insurance companies, including the largest provider, VZP, started to use "internal guidelines" to put budget limits on drug payments. This new requirement, over and above the EU law, complicates the reimbursement process by essentially requiring a company to obtain an agreed budget for the drug from VZP before the State Institute for Drug Control can determine the reimbursement price. Czech medical societies and patient groups oppose these limits as they believe they limit access to new, innovative medicines. The U.S. Government continues to engage with insurance companies and the Czech government on this issue.

France: Pharmaceutical industry stakeholders continue to raise concerns about the French pharmaceutical market, including with respect to the significant tax burden on the industry and the constraints facing the sales of reimbursable medicines, sales of which dropped by 0.6 percent from 2013 to 2017 and by 2 percent per year over the previous four years. As an example of such constraints, U.S. stakeholders have expressed concern that market access for drugs in France is slower than elsewhere in Europe, resulting from delays in reimbursement approvals of as much as 405 days after marketing authorization, compared to the 180 days required by EU law. In July 2018, the French government announced that it will reduce the length of the delays to meet European industry requirements. France has not yet implemented any adjustments.

Greece: Pharmaceutical industry stakeholders face price controls and other market barriers, such as mandatory clawbacks and rebates. U.S. stakeholders report that the government's expenditure on outpatient medicines declined by 62 percent between 2009-2017, with the 2017 clawback reaching €800 million ($906 million), more than 30 percent of the total public pharmaceutical spending (€2.5 billion or $2.8 billion).

Hungary: Pharmaceutical industry stakeholders express concern that the Hungarian government's pricing and reimbursement policies, which include extended delays in decision-making and reimbursement, and frequent changes to the list of drugs approved for reimbursement, cause considerable unpredictability in the Hungarian market. U.S. stakeholders also raise concern with high sector-specific taxes, including a $35,000 per year tax levied on each sales representative employed by pharmaceutical companies and a clawback tax that requires firms to pay for any government spending on drugs that exceeds the pharmaceutical budget. Finally, industry experts note that a government procurement process for eight oncological therapies is based on cost, rather than medical benefit, and fails to adequately consult with physicians and patient groups or with industry.

Italy: U.S. healthcare companies face an unpredictable business environment in Italy, which includes highly variable implementation of complex budget policies. One such policy is the "payback system" for public hospital pharmaceutical purchases, which was first applied in 2013. It requires that pharmaceutical companies pay back 50 percent of the amount spent over budgetary limits for pharmaceutical spending. The pharmaceutical companies pay back the overspending to the national government through the Italian Drug Agency (AIFA), which is the organization in charge of calculating the overspending and collecting return payments. The Italian central government determines the overall annual budget for pharmaceutical products, which is then transferred to each region responsible for managing the healthcare system locally. Industry estimates that the Italian government has asked for roughly $1.48 billion from pharmaceutical companies between 2013 and 2015 as part of this policy. U.S. pharmaceutical firms account for 30 percent of the market but are asked to contribute 50 percent of the payback amount. Several U.S. and European companies have prevailed on appeal to the Regional Administrative Court when challenging the 2013, 2014, and 2015 payback calculations. The 2018 budget law requires companies to refund the overrun on 2016 pharmaceutical expenditures and to conclude the settlement agreements defined with the AIFA for the payback amounts for 2013, 2014, and 2015.

In August 2015, the Italian government published a law (D.L. 78/2015) applying the payback system to hospital purchases of medical equipment. That same law authorized hospitals to renegotiate signed agreements with medical device suppliers in order to reduce the unit price or purchase volume as previously defined in the contract. Since this law was introduced, the government has not provided further guidance or legislation on its implementation, creating significant uncertainty among U.S. medical device companies operating in Italy, forcing them to hold excessive amounts of capital in reserve.

U.S. stakeholders also have raised concerns regarding delays in market approval for pharmaceutical products and payments for medical devices. For example, it can take 12 months for products to be included in the Regional Registry even after the products have received marketing approval and been accepted for reimbursement. The average payment time from public hospitals to medical devices suppliers in Italy continues to exceed the EU average as well as the maximum period permitted by EU law.

Lithuania: The United States continues to engage with the Lithuania government regarding pharmaceutical market access issues. Discussions between the Health Ministry and U.S. stakeholders have made little progress to add innovative drugs to the government's reimbursement list. Stakeholders remain concerned about the lack of transparency in the pricing and reimbursement process for innovative drugs.

Poland: U.S. stakeholders have expressed concern regarding the tendering processes and the transparency of, and opportunity for meaningful stakeholder input in, reimbursement rules and determinations for biosimilar pharmaceutical products. Private hospital owners have complained that a new hospital network law enacted on October 1, 2017, makes it difficult to get reimbursed by the National Health Fund for lifesaving procedures, forcing the closure of some private hospitals, particularly in cardiology. Poland is in the process of drafting a new medical reimbursement law that is still in the consultation stage and carries the potential to bring about major changes to Poland's reimbursement system. The United States will continue to urge Poland to engage meaningfully with stakeholders to address their concerns.

Portugal: Multiple U.S. pharmaceutical companies have expressed concern about delays in payments for medicine from public hospitals that at times far exceed the legal 90 day payment period and can last up to 400 days. As of November 2018, U.S. pharmaceutical companies estimated that the arrears owed to U.S.

companies amounted to €300 million ($340 million). In addition, the companies face delays in approvals for the introduction of innovative products, with the average approval taking two years. The companies linked the payment and approval delays to budgetary constraints on the national health care system and noted they affected domestic firms as well.

Romania: Innovative pharmaceutical producers have identified several significant challenges in Romania resulting from the Romanian government's failure to update, despite repeated requests, the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system. According to U.S. stakeholders, Romania added several new innovative drugs to the reimbursement list in 2018 and concluded the process of developing treatment protocols to make 37 new drugs available to patients. Numerous applications remain pending with no progress. This severely undermines the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House will not pay reimbursement for drugs that are not included on the reimbursement list. Both innovative and generic pharmaceutical companies also have started to withdraw drugs from the Romanian market, as the low official prices set in Romania can fall below production costs and affect business in third-country markets.

The clawback tax, equivalent to 24.1 percent of total gross sales during the first quarter of 2018, is another major challenge for U.S. stakeholders. This tax rate is determined on the basis of the difference between the state's budget for reimbursable drugs and the amount actually spent on the drugs. U.S. stakeholders continue to raise concerns regarding a lack of transparency, particularly in pricing and computation of the clawback tax, which the Romanian government is reviewing.

Slovakia: The process for marketing approval of new pharmaceutical products in Slovakia reportedly lacks transparency and deadlines are reportedly missed with some frequency. Medicine prices in Slovakia are capped based on the average of the three lowest prices within the EU, which reportedly incentivizes third parties to re-export pharmaceuticals to other EU markets, where they are sold at a profit. Until 2016, the Slovak State Institute for Drug Control had the right to monitor and ban the export of certain pharmaceutical products. As a result of legal proceedings launched by the Commission against Slovakia, this law was amended in January 2017, scrapping the option to ban export of pharmaceuticals and instead banning distribution companies from exporting pharmaceutical products unless they have approval of the producer or the license holder.

This revision of the law was upheld by the Commission in May 2018. Following the passage of the law, some pharmacies and pharmaceutical companies have attempted to have their medications removed from the list of categorized medications (*i.e.*, medications that are fully or partially covered by the health insurance), or attempted to stop distributing some medications to Slovakia.

Uranium

The EU's policies under the 1994 Corfu Declaration, a joint European Council and European Commission policy statement, restrict the importation into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. The Corfu Declaration has never been made public or notified to the WTO. The United States has conveyed to the Commission its concerns about the application of the Corfu Declaration.

Agriculture

Bananas

In June 2010, the United States and the EU signed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign banana distributors and to maintain a nondiscriminatory, tariff-only regime for the importation of bananas. The United States-European Union agreement complements a parallel agreement, the Geneva Agreement on Trade in Bananas (GATB), between the EU and several Latin American banana-supplying countries (also signed in June 2010), which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations.

The agreements marked the beginning of a process that, when completed, will culminate with the resolution of all of the various banana disputes and claims against the EU in the WTO. The GATB entered into force on May 1, 2012, and certification by the WTO of the EU's new tariffs on bananas was completed on October 27, 2012. On November 8, 2012, the EU and the Latin American signatories to the GATB announced that they had settled their disputes and claims related to bananas. On January 24, 2013, the U.S.-EU bananas agreement entered into force.

U.S. stakeholders have expressed concerns about actions taken by Italian customs authorities since 2013, and related decisions taken by Italian courts, challenging the use of certain EU banana import licenses under pre-2006 EU regulations. The United States has pressed the Commission to clarify its position on this matter.

Meursing Table Tariff Codes

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

Subsidies for Fruit and Vegetables

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy (CAP), including for measures related to the promotion of fruit and vegetables. Implementing rules, covering fresh and processed products, are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives. In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

Customs Barriers and Trade Facilitation

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there are separate agencies responsible for the administration of EU customs law in each of the 28 Member States. Institutions or procedures are not in place to ensure that EU rules and decisions on classification, valuation, origin, and customs procedures are applied uniformly throughout the Member States. The Binding Tariff Information program provided for by EU-level law, but administered at the Member State level, does provide for advance rulings on tariff classification and country of origin. EU rules do not require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues.

In some cases, where the customs agency of a Member State administers EU law differently, or disagrees with the Binding Tariff Information issued by another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State, and the rules regarding these reviews vary from Member State to Member State. A trader encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the Court of Justice of the European Union (CJEU). Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO Dispute Settlement Body (DSB).

The Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed. Member States continue to use different data templates. Full implementation of harmonized customs systems is not expected to be complete before the end of 2020.

The Commission has published delegated and implementing acts on the procedural changes set forth in the UCC. These include Delegated Regulation (EU) 2015/2446, Delegated Regulation (EU) 2016/341, and Implementing Regulation (EU) 2015/2447. In April 2016, the Commission published another implementing decision (2016/578) on the work program relating to the development and deployment of the UCC's electronic systems.

The United States will continue to monitor the UCC implementation process, focusing on its impact on the consistency of customs treatment under EU customs law.

TECHNICAL BARRIERS TO TRADE/SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Transparency and Notification

The United States faces a proliferation of technical barriers to trade in the EU. This is attributable in part to the EU's process for preparing and adopting post-legislation "implementing and delegated acts." These processes lack clarity and efficacy with respect to ensuring that technical regulations, guides, or recommendations within the scope of the WTO Technical Barriers to Trade (TBT) Agreement are properly notified to the public. The United States regularly raises concerns, both in bilateral engagement and in the context of the WTO TBT Committee, in cases where notification of certain measures that may have a significant effect on trade have not taken place at an appropriate stage, when amendments can still be introduced and comments may be taken substantively into account. In particular, if notification takes place, it often happens at a procedural stage when it is too late to revise the measure to take into account any concerns, including substantive or scientific, raised by other WTO Members.

This has been observed during chemical evaluation under the EU's regulatory processes (Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and Classification and Labeling (CLP)) where the controls on products are typically notified after scientific review committees have convened, providing affected parties with no reasonable procedural gateway for the input of additional scientific or technical data. In other cases, measures are simply not notified at all, as is the case with a series of country of origin labeling (COOL) measures. Improvement and greater consistency in EU notification of measures, particularly implementing and delegated acts that may have a significant effect on trade, could reduce the emergence of technical barriers to trade by ensuring that the EU takes into consideration significant concerns before it finalizes measures.

European Standardization and Conformity Assessment Procedures

The EU's approach to standards-related measures, including its conformity assessment framework, and its efforts to encourage governments around the world to adopt its approach, including European regional standards, creates a challenging environment for U.S. exporters. In particular, the EU's approach impedes market access for products that conform to international standards as opposed to European regional standards (called European harmonized standards or ENs), even though international standards may meet or exceed the EU (or third country) regulatory requirements. U.S. producers and exporters thus face additional burdens in accessing the EU or other markets not faced by EU exporters and producers in accessing the U.S. market.

In 1985, the EU adopted what is known as the "New Approach" to the use of standards for products.[1] The "New Approach" was updated in 2008 and rebranded as the "New Legislative Framework" (NLF). The NLF represents a package of measures meant to clarify EU product marking requirements, establish a common legal framework for industrial products, and improve product safety, often through the involvement of market surveillance authorities.[2] Product requirements in a variety of sectors (*e.g.*, toys, machinery, medical devices) are regulated through NLF legislation. Under the NLF, EU legislation sets out the "essential requirements" that products must meet in order to be placed in the EU market and benefit from free movement within the EU. Products that conform to harmonized ENs (HENs) under the NLF are

[1] Official Journal of the European Communities, C 136, 4.6.1985, p. 1.
[2] Official Journal of the European Union (OJEU), L 218, 13.8.2008, p. 30–47; OJEU, L 218, 13.8.2008, pp. 82–128; OJEU, L 218, 13.8.2008, pp. 2129.

presumed to be in conformity with the essential requirements.[3] HENs, however, can only be developed through the European Standards Organizations (ESOs) CEN,[4] CENELEC,[5] and ETSI,[6] as directed by the European Commission through a standardization request. These products can bear what is known as a "CE mark" and can be sold throughout the EU.

While the NLF does not explicitly prohibit other standards from being used to meet the EU's essential requirements, the practical effect of the EU system discourages the use of other standards. Specifically, the costs and uncertainty associated with not using an EN and attempting to demonstrate that use of an alternative standard fulfills EU essential requirements are often prohibitive. For example, if a manufacturer chooses not to use an EN, it needs to assemble a more extensive technical file through a costly and burdensome process since the alternative standard cannot be granted a presumption of conformity with the essential requirements or applied directives. This process must be repeated each time a similar new product is introduced to the market. Even if a manufacturer assembles such a file, there is no certainty that Member State authorities will treat the product as conforming to the EU's essential requirements. As a result, U.S. producers often feel compelled to use the relevant EN developed by the ESOs for the products they seek to sell on the EU market. This is the case even where U.S. products produced according to relevant international standards provide similar or higher levels of safety and performance.

The CEN or CENELEC technical committees that draft the European standards generally exclude non-EU nationals from participating in that process.[7] In the limited instances where non-EU nationals do participate, they are not allowed to vote. Accordingly, when a U.S. producer uses an EN, it is typically using a standard that has been developed through a process in which it had no meaningful direct or representational opportunity to participate or provide technical input. This has a pronounced impact on small and medium-sized enterprises and other companies that do not have a European presence. The opportunity for U.S. stakeholders to influence the technical content of EU legislation setting out essential requirements (*i.e.*, technical regulations) is also limited. This is because when the EU notifies proposed legislation containing essential requirements to the WTO, it does not identify the specific CEN or CENELEC standards for which the presumption of compliance will be given. Furthermore, the EU only notifies legislation after the Commission has transmitted it to the Council and Parliament and is no longer in a position to revise the directive in light of comments received. Consequently, U.S. stakeholders often do not have the opportunity to comment on critical technical elements of proposed technical regulations and conformity assessment procedures contained in EU legislation, or on the standards that may be used to fulfill that legislation's essential requirements. In other words, they are precluded from participating in the development of requirements as well as the means by which those requirements will be fulfilled.

Additionally, the United States has serious concerns regarding the EU's conformity assessment framework, as set out in Regulation (EC) 765/2008 and Decision 768/2008. Regulation 765 requires each Member State to appoint a single national accreditation body and prohibits competition among Member States' national accreditation bodies. Under the EU system, an accreditation certificate from one Member State accreditation body suffices throughout the EU. The regulation further specifies that national accreditation bodies shall operate as public, not-for-profit entities. This regulation effectively bars use of trade-facilitative international accreditation schemes and precludes U.S. accreditation bodies from offering their services in the EU with respect to any mandatory third-party conformity assessment requirements.

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[3] Moreover, an EN must be implemented at the national level by an EU Member State, including through the withdrawal of any conflicting national standard.
[4] European Committee for Standardization.
[5] European Committee for Electrotechnical Standardization.
[6] European Telecommunications Standards Institute.
[7] For example, CEN/TC 438 is the technical committee for CEN that develops and publishes standards for additive manufacturing.

Decision 768 sets out reference provisions to be used in EU legislation establishing conformity assessment requirements for products falling within the NLF. Legislation applying Decision 768 requires that any mandatory third-party conformity assessment be performed by a body that has been designated as a "Notified Body" and permits only bodies "established under national law" to become Notified Bodies. In practice, the EU interprets "established under national law" as a requirement that any entity seeking designation as a Notified Body must be established in the EU and, in particular, in the Member State from which it is seeking such designation. This raises serious market access concerns for U.S. producers, whose products may have been tested or certified by conformity assessment bodies located outside the EU, and denies U.S.-domiciled conformity assessment bodies the opportunity to test and certify products for the EU market. This lack of reciprocal treatment of U.S. conformity assessment bodies contrasts with the U.S. approach to conformity assessment, which generally provides national treatment to EU bodies. The EU conformity assessment approach adds increased time to market, increases costs for manufacturers, and requires U.S. testing and certification bodies to establish operations in the EU to remain competitive.

The EU also promotes adoption of ENs in other markets and often requires the withdrawal of non-EU standards as a condition of providing assistance to, or affiliation with, other countries, which can give EU manufacturers commercial advantages in those markets. Where the withdrawn standards are international standards that U.S. producers use, which may be of equal or superior quality to the ENs that replaced them, U.S. producers must choose between the cost of redesigning or reconfiguring their products or exiting the market. Further, EU trade policy seeks to narrow the definition of what is considered an international standard within the meaning of the WTO TBT Agreement. For instance, as part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard.[8] This practice accords preferential treatment to organizations in which the EU tends to carry an outsized influence (*e.g.*, the World Forum for Harmonisation of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe's 1958 Agreement) or with which the ESOs have existing cooperation agreements (*e.g.*, the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission). Furthermore, this attempt to reinterpret which standards should be deemed international within the meaning of the TBT Agreement is contrary to relevant decisions of the TBT Committee, which recognizes that standards developed by organizations domiciled in any WTO country can be deemed international, provided they are developed in accordance with relevant WTO principles. Standards developed by organizations in the United States could therefore be deemed international.

Civil Nuclear Technologies

U.S. stakeholders argue that the development of civil nuclear sector technology regulations, standards, or conformity assessment should not require the use of certain EU technologies when U.S. technologies, which meet U.S. civil nuclear safety standards, are equally safe. In the nuclear industry, local standards in the EU may not always conform to international nuclear safety norms, placing U.S. exporters at a disadvantage in markets where they must compete with firms using substandard parts. EU Member States are also under pressure to adopt French civil nuclear regulatory standards, which could potentially create a bias against U.S. firms that adhere to international standards developed by U.S.-domiciled standards-developing organizations (*e.g.*, American Society of Mechanical Engineers (ASME)) and want to enter the European market. Furthermore, the EU's approach of explicitly referencing particular standards potentially undermines innovation and eschews more effective means of addressing potential regulatory objectives.

[8] For example, EU-Japan Economic Partnership Agreement, Article 6.1 (International Standards).

Chemicals: Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH)

The EU regulation concerning the production, marketing, and use of chemicals known as REACH entered into force on June 1, 2007. REACH imposes extensive registration, testing, and data requirements on chemicals manufactured or imported into the EU in quantities greater than one metric ton. The restriction process limits or bans certain substances on the EU market. It also requires manufacturers or users of certain hazardous chemicals to obtain authorizations for those chemicals. Furthermore, REACH impacts virtually every industrial sector because each entity registering a chemical under the legislation must account for the uses of that chemical in the products it places or intends to place on the EU market.

The United States agrees on the importance of regulating chemicals to ensure environmental and health safety. The United States is concerned, however, that REACH appears to impose requirements that are either more onerous for foreign producers than EU producers or simply unnecessary. For example, stakeholders have raised concerns that they must provide data as part of the registration process under REACH that is irrelevant to health and environmental concerns. Additionally, there appears to be inconsistent and insufficiently transparent application of REACH by Member States. The United States and many other WTO Members have raised concerns regarding various aspects of REACH at nearly every WTO TBT Committee meeting for years. WTO Members have emphasized the need for greater transparency in the development and implementation of REACH requirements and frequently cite the need for further information and clarification, as well as problems producers have in understanding and complying with REACH's extensive registration and safety data information requirements.

Community Rolling Action Plan

The United States and stakeholders also have concerns about a lack of transparency associated with the Community Rolling Action Plan (CoRAP). CoRAP is part of the REACH substance evaluation process and is updated every March. Its purpose is to allow Member States and the European Chemicals Authority (ECHA) to prioritize substances they suspect of being hazardous to human health or the environment. Depending on the outcome of the evaluation, a substance evaluated under CoRAP may be considered for classification as a substance of very high concern and become subject to authorization and restriction procedures. It is also possible that after evaluation, a substance will be found to pose no such risk. ECHA has established criteria for selecting substances for placement on the list. These criteria address concerns about hazard, exposure, and tonnage. Member States are encouraged, but not obliged, to use the ECHA criteria. ECHA published the most recent CoRAP list on March 20, 2018. It contains 108 substances for evaluation by the Member States. CoRAP preliminary reports should be made available to interested U.S. companies, even if they have not yet registered the particular substance, but the reports are made available only to registrants. The EU should undertake to improve the transparency of the CoRAP process, including by publishing CoRAP preliminary reports, which would both contribute to the EU's objectives and address U.S. stakeholders' concerns by helping reduce costs.

Substances of Very High Concern (SVHC) Roadmap

The United States also has continued to raise concerns bilaterally with the EU on the lack of public notice and comment associated with the "Risk Management Options" (RMO) analysis phase of the SVHC Roadmap. Under the Commission's Roadmap for evaluation of individual SVHCs, at the request of the Commission, a Member State competent authority or ECHA will conduct an RMO analysis to determine whether regulatory risk management is required for a given substance and to identify the most appropriate regulatory instrument to address a concern. The regulatory decision may be to pursue authorization or restriction, address the concern via other legislation, or take no action. The Commission's SVHC Roadmap identifies five minimum criteria for the RMO analysis and states that the RMO is not meant to be public. Beyond this, the Member State authority drafting the RMO has discretion with respect to the level of detail provided in its analysis and whether or not stakeholder consultation is appropriate. ECHA has said that documenting the RMO analysis and sharing it with other Member States and the Commission promotes early discussion and should ultimately lead to a common understanding on the regulatory action pursued. The United States supports the EU's efforts to conduct RMO analyses and believes the RMO analysis should be implemented in a harmonized and consistent manner by Member States. To prevent or minimize unnecessary potential adverse effects on trade, the RMO analysis should be subject to public notice and comment, with the views expressed by commenters taken into account by the Member State or ECHA irrespective of the domicile of the commenter.

Court of Justice of the European Union, Judgment in Case C-106/14

On September 10, 2015, in case C-106/14, the CJEU released an important ruling on the notification and information duties applicable to the producers and importers of articles under REACH. The CJEU held that the notification and information duties apply to each individual component "article," and not just to the whole assembled or finished "article," for producers and importers that deal with more than one ton per year of any SVHC present in articles over 0.1 percent by weight.

The court's conclusion was contrary to the existing ECHA guidance, which only required notification for SVHCs on the whole article-level. In June 2017, following a two-step update to the applicable "Guidance on Requirements for Substances in Articles" initiated in 2011, ECHA published new guidance on requirements for substances in component articles to assist companies in meeting the requirements of the court ruling. The United States continues to assess the trade impact on manufactured products such as vehicles, information and communication technology (ICT) equipment, and medical devices, and remains concerned that requiring notification of components rather than the final good will increase burdens on both producers and importers.

Cosmetics: Scientific Committee on Consumer Safety (SCCS) Ingredient Reviews & Amendments to the EU Cosmetics Regulation

Regulation (EC) 1223/2009 of the European Parliament and of the Council on cosmetic products (EU Cosmetics Regulation) provides that the SCCS conduct risk assessments for all ingredients approved for use in cosmetics in the EU market. Based on SCCS assessments, the Commission rules on whether the use of the ingredient should be restricted and, if so, in which annex within the EU Cosmetics Regulation it should be listed.

The United States and stakeholders have concerns as to the transparency of the process under which the SCCS defines the scope of its risk assessments. While the initial request for stakeholder participation and input into SCCS reviews is public once an assessment starts, changes in scope or the information being considered in the assessment may not be publically notified. According to SCCS Rules of Procedure, the Committee solicits additional information on an invitation-only basis. In practice, this process can prevent non-EU interested parties from providing input and can translate into assessment determinations based on risk assessments that do not fully consider available scientific evidence or relevant uses of a particular cosmetics ingredient. Furthermore, the process of petitioning an opinion from SCCS can often entail significant and unexplained delays, with the overall process often taking two or more years for completion.

Renewable Fuels: Renewable Energy Directive

The EU Renewable Energy Directive (RED) requires that biofuels and biofuel feedstocks obtain a "Proof of Sustainability" (POS) certification to qualify for tax incentives and national use targets. To that end, RED also establishes a methodology and accounting system by which Member States may record and calculate required greenhouse gas emission (GHG) savings as compared to a baseline for fossil fuels. The

United States has expressed its concern to the Commission that the RED and its paperwork and verification requirements disrupt trade in U.S. products (specifically soybeans for biofuel and corn ethanol). For instance, one method to meet the sustainability and GHG savings requirements of RED is to certify biofuel production through a voluntary certification system.

Since April 2015, the U.S. Soybean Export Council (USSEC) has been seeking EU recognition of the U.S. Soybean Sustainability Assurance Protocol (SSAP) as a voluntary certification scheme. In April 2018, USSEC re-submitted a voluntary scheme application to the Commission. On January 29, 2019, the Commission recognized the SSAP as a voluntary scheme under the RED. This will allow soybean oil made from SAAP-certified soybeans to be used as feedstock for biodiesel production in the European Union.

In November 2016, the Commission presented a new Renewable Energy Directive (RED II) for the period 2020-2030 as part of a comprehensive "Winter Energy Package" of legislative proposals that includes initiatives on bioenergy sustainability (liquid biofuels and biomass). The European Parliament and the Council came to an agreement on a final text in June 2018, and the European Parliament formally adopted the legislative text in November 2018. The Council is expected to formally approve RED II before the end of the year.

As of March 2019, provisions in these drafts introduce onerous and complex sustainability criteria for biomass and could be extremely problematic for U.S. exports of sustainable wood pellets. Although there is uncertainty about the future standards, forest management costs could increase due to increased certification requirements, logger training, and monitoring. If the wood cannot be recognized as meeting the sustainable standards for renewable energy, it could lose its competitive advantage to export. The United States exported $793 million of wood pellets to the EU in 2018.

Member State Sustainability Criteria

The Netherlands: In the Netherlands, local organizations and the Dutch government are adopting and implementing standards and standard-related measures that are impeding or threatening to impede U.S. trade. For example, local organizations, such as the Sustainable Trade Initiative (IDH) and the Forest Stewardship Council (FSC), have developed standards for soybeans and wood pellets, respectively, that have been supported by the Dutch government and effectively require U.S. producers to meet onerous certification requirements. After China and Mexico, the Netherlands is the third largest importer of soybeans and soybean derivatives in the world. On March 30, 2015, the Dutch government amended regulation governing sustainability requirements for solid biomass and implemented onerous sustainability criteria for wood pellets. These criteria include a requirement for sustainability certification at the forest level, effectively precluding reliance on the U.S. risk-based approach to sustainable forest management. As a result of the implementation of the criteria, wood pellet exports to the Netherlands have dropped from seven percent of total U.S. wood pellet exports in 2014 to less than one percent in 2018.

Server Energy Efficiency Regulation

With the review of existing energy efficiency requirements for data servers in 2018, the EU introduced new requirements to meet climate and energy targets as well as circular economy objectives. The proposed measures would require data center operators and clients to select servers based on their idle characteristics and not their work capacity in various situations. U.S. industry argues that the end result will be the deployment of a higher number of suboptimal server configurations with a higher energy consumption than would be required by an active efficiency or a more representative idle allowance/threshold framework. U.S. information and consumer technology companies have expressed concerns about the active and idle energy efficiency testing requirements and have advocated for the adoption of the Server Energy Efficiency Rating Tool (SERT) active efficiency metric, which they believe would be less trade restrictive and just as effective in achieving the desired energy policy objectives. In September 2018, the revised measure included a provision calling for an active energy efficient criteria for servers based on SERT. However, U.S. industry is still concerned about the requirement for an idle energy requirement. The United States has asked the EU to re-notify the draft regulation.

Transport Fuel: Fuel Quality Directive

The EU's revised Fuel Quality Directive (FQD), adopted in 2009 as part of the EU's Climate and Energy package, requires fossil fuel suppliers to reduce the lifecycle greenhouse gas intensity of transport fuel by six percent by 2020 and to report on the carbon intensity of these fuels. The directive granted the Commission the power to develop a methodology for calculating GHG life-cycle emissions for transport fuels. The United States has raised concerns with the Commission about the lack of transparency and opportunity for public comment in the development of the Commission proposal for the methodology for calculating GHG life-cycle emissions for transport fuels.

The FQD also carries implications for U.S. biofuel exports stemming from differing definitions of the term "biodiesel." The practical impact of the diverging definition is a limit or exclusion of the amount of soybean, palm, and sunflower oil feedstocks that can be utilized as a blend with rapeseed oil, diminishing trade opportunities and adding costs to biodiesel exports from the United States to the EU. The EU has not provided a technical justification for this exclusionary definition.

Country of Origin Labeling (COOL)

Eight EU Member States – Finland, France, Greece, Italy, Lithuania, Portugal, Romania, and Spain – have implemented or are in the process of developing and implementing a variety of national COOL schemes that apply to different types of ingredients and finished products, have varying implementation times, and require different wording on labels. The information required on packaging varies according to each individual Member State and can include the country of birth, fattening, and slaughter of animals; country of milking, packaging, or processing for dairy products; and country of cultivation and processing for wheat.

Affected industries have raised concerns that these national COOL requirements could impede market access for imported ingredients. In addition, some of the measures could favor goods produced in certain countries by selectively eliminating the requirements for processed foods produced in EU Member States, Turkey, or EFTA countries that are part of the European Economic Area.

The United States has consistently raised concerns about these measures at past WTO TBT Committee meetings and continues to do so. In particular, the United States has noted concerns including the treatment of EU versus non-EU origin products, the amount of recordkeeping that may be required to comply with the measures, the potential to favor select countries, and the impact on U.S. exports. The United States has also expressed its concern regarding the failure of the EU or the Member States to notify the measures under the TBT Agreement, solicit and take into account feedback from interested stakeholders, and allow a reasonable interval of time between publication and entry into force of the various measures. On May 28, 2018, the Commission published an implementing regulation laying down common rules regarding the indication of "the country of origin or place of provenance of the primary ingredients of a food where different to that given for that food." This regulation will apply as of April 1, 2020, and will require that where the origin of a processed food is provided, if the origin of the food is different from the origin of its primary ingredient, the origin of the primary ingredient shall be given or at least indicated as being different to the origin of the food. The national labelling schemes within the EU should expire before this new implementing regulation will enter into application.

Member State Measures

Italy: The Italian government has introduced COOL regulations for milk, yoghurt, cheese, butter, rice, durum wheat and semolina in pasta, rice, and tomatoes. These measures have not been notified to the WTO. On May 7, 2018, the Ministry of Agricultural, Food and Forestry Policies and the Ministry of Economic Development announced the signing of a decree which codifies that all Italian COOL measures passed since 2017 (durum wheat pasta, rice, dairy and milk products, and tomatoes in tomato products) will expire on March 31, 2020. Officials stated this provision was necessary to avoid regulatory gaps and any ensuing confusion pending the implementation of regulations adopted by the Commission and scheduled to enter into force on April 1, 2020.

Italy continues to take an aggressive stance on COOL-related issues. The announced measure shows the country's commitment to maintaining its regime as long as possible, despite repeated warnings from the Commission.

France: In early 2017, after receiving Commission approval, France implemented a COOL scheme for processed food products that contain dairy and meat. The scheme had been scheduled to remain in force until December 31, 2018. For meat ingredients, the relevant measure requires that the label mention the country of the animal's birth, the country of rearing, and the country of slaughter. For dairy ingredients, the label must mention country of milking, processing, and packaging. The French dairy company Lactalis challenged one of the French COOL regulations stipulating that processed food products manufactured or legally marketed in another EU country or in a third country are exempt from this French COOL requirement. Lactalis took this regulation before the State Council, France's highest administrative court, as unlawfully superseding a 2011 regulation on the provision of food information to consumers (EU framework Regulation 1169/2011). The State Council referred the case to the CJEU, which is expected to make a determination in 2019.

Spain: On September 5, 2017, Spain notified to the Commission a Draft Royal Decree on the indication of the origin of milk used as a raw material on the labelling of milk and milk products. This notification followed a February 2017 national public consultation period on the proposed measure. In its consultation, Spain notes that the purpose of such a measure would be to "avoid the loss of competitiveness of milk and milk products produced in Spain that could result from the application of mandatory rules in this area that have already been implemented in other countries in the EU." Spain adopted the Royal Decree on September 21, 2018.

Romania: Effective January 1, 2018, Romania required dairy processors to specify the country of milking, packaging, and processing for milk and food products containing dairy.

Greece: On October 12, 2017, the Parliament in Greece validated COOL requirements for milk, dairy, and meat products. Law 4492/18-10-2017 mandates that processors specify the country of milking, processing, and packaging for processed food products containing dairy. Traceability is mandatory for all meat products during production and distribution. Greece's COOL law for milk, dairy, and meat products entered into force 180 days from the date of publication in the Gazette (April 16, 2018) and will be in effect for 30 months on a trial basis.

Portugal: On July 27, 2016, Portugal notified to the Commission a draft decree on the mandatory indication of the country of milking and the country of processing for milk or milk used in dairy products. The mandatory measures were approved by the Commission and entered into effect in July 2017. No changes are envisioned to these measures.

Finland: On September 28, 2016, Finland notified to the Commission a draft decree on mandatory origin labelling for milk, milk used as an ingredient in dairy products, and meat used as an ingredient. The measures entered into force on June 1, 2017. The measures apply to pre-packed foodstuffs produced in Finland for a fixed pilot term of two years.

Lithuania: On July 13, 2016, Lithuania notified to the Commission a draft order on mandatory origin labeling for milk and certain dairy products. The measure entered into force on January 1, 2017, and remained in force on a trial basis until December 31, 2018. Lithuania provided a report to the Commission detailing implementation of the measure. According to information from the Lithuanian Ministry of Agriculture, preliminary results of the program indicated that processors were not satisfied with the pilot program because of difficulties in obtaining additional information from suppliers regarding origin of milk. Lithuania did not extend the pilot COOL program for 2019.

Nutritional Labeling

EU framework Regulation 1169/2011 on the provision of food information to consumers went into effect on December 13, 2014, except for the provision on mandatory nutrition labeling, which became effective December 13, 2016. The measure regulates the display of product information on product packaging and online stores ostensibly to provide consumers with information related to nutrition, ingredients, and allergens.

The United States has concerns that Regulation 1169/2011 appears to provide wide latitude for Member States to adopt non-uniform and potentially inconsistent implementing regulations. U.S. stakeholders are thus concerned about the burden of meeting multiple labeling requirements, particularly if those requirements cannot be met through stickering or supplemental labeling. During the consultative process, the United States has sought assurances that imported products will be subject to harmonized EU requirements, regardless of port of entry, and that compliance with national schemes (such as the United Kingdom's and Ireland's traffic light nutrition labeling requirements or France and Belgium's NutriScore scheme) would remain voluntary. The United States will continue to monitor this issue closely.

Member State Health Labeling

Ireland: On June 9, 2016, Ireland notified its proposed Public Health (Alcohol) Bill 2015 to the WTO TBT Committee. The proposal contains a range of provisions, including minimum unit pricing of alcohol products; health labelling of alcohol products; regulation of advertising and sponsorship; structural separation of alcohol products in mixed trading outlets; and the regulation of the sale and supply of alcohol in certain circumstances. These proposed measures, which diverge from EU-wide requirements, have the potential to generate additional administrative costs and detrimentally impact the ability of U.S. exporters to reallocate product in the European market. Further, in late 2017 a number of amendments were made to the bill, including with respect to health labelling. The United States has asked Ireland to notify those amendments to the WTO in accordance with the transparency provisions of the WTO TBT Agreement. The amending bill passed in the lower house of the Irish Parliament in October 2018. The United States will continue to express concern about this measure and request Ireland to notify its proposed measures to the WTO TBT Committee.

Agriculture Quality Schemes

EU Regulation 1151/2012 "on quality schemes for agricultural products and foodstuffs" combines into one regulation rules for two different EU schemes and adds new rules on optional terms. The regulation applies to a range of agricultural products, covering: Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI); "Traditional Specialties Guaranteed" (TSG); and optional quality terms.

Optional quality terms are intended to provide additional information about product characteristics such as "first cold-pressed extra virgin olive oil" and "virgin olive oil." A separate measure addressing the marketing standards for wine and spirits was notified to the WTO on September 11, 2011.

The schemes covered by the regulation are: 1) certification schemes for which detailed specifications have been laid down and are checked periodically by a competent body; and 2) labeling schemes, which are subject to official controls and communicate the characteristics of a product to the consumer. Schemes can indicate that a product meets baseline requirements but can also be used to show "value-adding qualities," such as specific product characteristics or farming attributes (*e.g.*, production method, place of farming, mountain product, environmental protection, animal welfare, organoleptic qualities, "Fair Trade," etc.).

The United States remains concerned that "place of farming" requirements are unclear, difficult to comply with, and lack a basis in international standards. International standards promulgated by the Codex Alimentarius Commission (Codex), for instance, maintain no recommendation for place of farming designations. Codex has also rejected proposals that would have expanded country of origin designations to foods with multiple ingredients, because such labeling caused consumer confusion.

Further, the United States remains concerned over certain aspects of the TSG requirements, including whether "prior use of a name" includes a trademark or prior geographical indication. The United States also is seeking clarification of the manner of precedence used in determining TSG requirements relative to trademarks. Despite assurances from the EU that the provisions of EU Regulation 1151/2012 "ensure that a prior trademark is not affected by the registration of a TSG," it remains unclear whether prior use of a trademark will be grounds for opposing registration of a TSG. Finally, U.S. stakeholders have expressed concern about the EU's decision to shorten the comment period to oppose a registration from six months to two months.

The United States continues to stress to the Commission that common names of products should not be absorbed into quality schemes, whether for wine or other products. For instance, if a Codex standard exists, or if a name is used in a tariff schedule or by the World Customs Organization, the United States believes that the name should be excluded from the quality schemes. The United States takes issue with the Commission allowing two PGI applications for "danbo" and "havarti" to proceed, despite the existence of Codex standards and objections to the 2017 registration of danbo as a PGI. The United States has further argued to not require new certification and labeling quality schemes in order to gain-market access; however, where the EU implements such schemes, efforts should be made to acknowledge voluntary U.S. industry definitions. Similarly, U.S. processes and procedures should be acceptable for labeling requirements, and system and process comparability with industry definitions should be sought in order to minimize any negative market access impact for U.S. exports.

In August 2018, the EU notified to the WTO a draft regulation as part of the reform of its Common Agricultural Policy, which included proposed amendments to Regulation 1151/2012. However, the proposed amendments do not appear to address concerns expressed above. The U.S. Government and industry have expressed concern about the draft, including through written comments, and will continue to engage with the EU on this issue.

Wine Traditional Terms

Separate from its regulation on agricultural quality schemes, the EU continues to aggressively seek exclusive use for EU producers of "traditional terms," such as "tawny," "ruby," and "chateau," on wine labels. Such exclusive use of traditional terms impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms within their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May

2002. In June 2010, U.S. stakeholders submitted applications to be able to use the terms in connection with products sold within the EU. In 2012, the EU approved the applications for use of two terms, "cream" and "classic," but the EU's delayed application approval process for other terms continues to be a significant concern. The United States has repeatedly raised this issue in the WTO TBT Committee in recent years and also has pursued bilateral discussions. Beyond approving the two terms, the EU has not taken any visible steps to address U.S. concerns.

In 2013, the Commission started discussions with the Member States on a possible simplification of wine labeling set out in Regulation 607/2009. In May 2018, the EU notified to the WTO draft regulations related to wine labeling. However, the draft regulations do not appear to resolve the concerns, particularly as relates to the use of "traditional terms." The U.S. Government and industry have expressed concern about the draft, including through written comments, and will continue to engage with the EU on this issue.

Distilled Spirits Aging Requirements

The EU requires that for a product to be labeled "whiskey" (or "whisky"), it must be aged a minimum of three years. The EU considers this a quality requirement. U.S. whiskey products that are aged for a shorter period cannot be marketed as "whiskey" in the EU market or other markets that adopt EU standards, such as Israel and Russia. The United States has a long history of quality whiskey production, particularly by micro-distillers, which has not entailed minimum aging requirements, and views a mandatory three-year aging requirement for whiskey as unwarranted. Recent advances in barrel technology enable U.S. micro-distillers to reduce the aging time for whiskey while producing a product commensurate in quality. In 2017, the United States continued to urge the EU and other trading partners to end whiskey aging requirements that are restricting U.S. exports of whiskey from being labeled as such.

Certification of Animal Welfare

The EU requires animal welfare statements on official sanitary certificates. The EU's certification requirements do not appear to advance any food safety or animal health objectives and thus do not belong on sanitary certificates. The U.S. position is that official sanitary and phytosanitary certificates – the purpose of which is broadly limited to prevent harm to human, animal, or plant-life or health from diseases, pests, or contaminants – should only include statements related to animal, plant, or human health, such as those recommended by Codex, World Animal Health Organization (OIE), and the International Plant Protection Convention (IPPC) or have scientific justification.

Sanitary and Phytosanitary Barriers

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures unnecessarily restrict trade without furthering their safety objectives because they are not based on scientific principles, maintained with sufficient scientific evidence, or applied only to the extent necessary. Moreover, the United States believes there are instances where the EU should recognize current U.S. food safety measures as equivalent to those maintained by the EU because they achieve the same level of protection. If the EU recognized the equivalence of U.S. measures, trade could be facilitated considerably.

Hormones and Beta Agonists

The EU maintains various measures that impose bans and restrictions on meat produced using hormones, beta agonists, and other growth promotants, despite scientific evidence demonstrating that such meat is safe for consumers. U.S. producers cannot export meat or meat products to the EU unless they participate in a costly and burdensome process verification program to ensure that hormones, beta agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by the Codex Alimentarius have established a maximum residue level (MRL) for the safe trade in products produced with ractopamine. The Codex MRL was established following scientific study by the Food and Agriculture Organization of the United Nations (FAO)/World Health Organization (WHO) Joint Expert Committee on Food Additives (JECFA) that found ractopamine at the specified MRL does not have an adverse impact on human health.

The EU's ban on growth promotant hormones in beef is inconsistent with its WTO obligations. Specifically, in 1996, the United States brought a WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) over its ban on beef treated with any of six growth promotant hormones. A WTO dispute settlement panel concluded – and a subsequent report of the WTO Appellate Body affirmed – that the ban was maintained in breach of the EU's obligations under the WTO SPS Agreement. Following the failure by the EU to implement the recommendations of the WTO DSB to bring itself into compliance with its WTO obligations, the United States was granted authorization by the WTO in 1999 to suspend concessions. Accordingly, the United States levied *ad valorem* tariffs of 100 percent on imports of certain EU products. The value of the suspended concessions, $116.8 million, reflected the damage that the hormone ban caused to U.S. beef sales to the EU.

In September 2009, the United States and the Commission signed a Memorandum of Understanding (MOU), which established a new EU duty-free import quota for grain-fed, high quality beef (HQB) as part of a compromise solution to the U.S.-EU hormone beef dispute. Since 2009, Argentina, Australia, Canada, New Zealand, and Uruguay have also begun to ship under the HQB quota. As a result, the market share of U.S. beef in the HQB quota has decreased significantly. Since 2014, the United States has engaged in discussions with the EU on the future operation of the MOU to ensure that U.S. producers are compensated through increased export benefits in the EU market in exchange for the continued suspension of WTO-sanctioned trade action. In December 2016, the United States sought public comments related to a request from the U.S. beef industry to reinstate trade action against the EU. The United States also held a public hearing in connection with this request on February 15 to 16, 2017. The United States considered the various views and points in the public comment submissions and testimony at the public hearing. The United States continues to engage the EU regarding the unscientific ban on meat and animal products produced using hormones, beta agonists, and other growth promotants. To remedy the erosion of U.S. beef access to the HQB, the United States and the EU have engaged in negotiations to change the HQB quota, after the EU received a mandate to do so from the Council in October 2018.

Animal Cloning

The EU Novel Foods and Novel Food Ingredients Regulation (Novel Foods Regulation) issued in 1997 is the only EU measure that potentially addresses the use of animal cloning for food production.[9] The Novel Foods Regulation would appear to encompass food products derived directly from cloned animals.[10] Food products subject to the Novel Foods Regulation require a pre-market authorization by the EU Member State and potentially the Commission in order to be imported or sold in the EU.

[9] Regulation (EC) No 258/97.
[10] The Novel Foods Regulation covers certain types of "foods and food ingredients which have not hitherto been used for human consumption to a significant degree within the Community ...." Regulation (EC) No 258/97.

In January 2008, the Commission proposed a revision of the Novel Foods Regulation to simplify the authorization procedure for placing new food products on the market. The proposed revision failed in significant part due to a disagreement among the Commission, the Parliament, and the Council regarding the need for specific rules on food from cloned animals.

In December 2013, the Commission published two new proposals on animal cloning, in conjunction with a new proposal for a novel foods regulation. One of the proposed directives (the Cloning Technique Proposal) would ban animal cloning for food purposes in the EU and the import of cloned animals or embryos, while the other (the Cloning Food Proposal) would ban the marketing of food, both meat and dairy, from cloned animals, but not from their offspring. However, both of these proposals appear to be inconsistent with risk assessments done by competent authorities in the EU and other countries that show no differences in terms of food safety between food products produced from cloned animals or their offspring and those produced from conventionally bred animals.

In June 2015, the European Parliament's Agriculture and Rural Development (AGRI) Committee and Environment, Public Health and Food Safety (ENVI) Committee, adopted a joint report proposing amendments to the Commission's aforementioned proposals that would vastly extend their scope and impact and change the measure from a directive into a regulation. The substance of these proposed amendments included permanent bans on clones and their offspring for all farmed animals, including fish and poultry, as well as bans on all agricultural products derived from them, including food, semen, and embryos. The proposed amendments also included a ban on cloning of animals for sports. In September 2015, the full Parliament, or Plenary, approved the AGRI/ENVI report and amendments. A new EU framework Regulation 2015/2283 on Novel Foods was adopted in November 2015 and published in Official Journal L 327 on December 11, 2015. Most provisions of the new Novel Foods Regulation became applicable on January 1, 2018. Food from clones, but not offspring, will continue to fall within the scope of the Novel Foods Regulation until separate legislation on cloning is adopted. Although the EU proposal on animal cloning was approved by the EU Parliament in September 2015, the file is still at the technical level in the Council and has reportedly seen no progress. The United States believes the use of cloning technologies are beneficial for herd improvement and that no differences have been demonstrated in terms of food safety between food products produced from cloned animals or their offspring and those produced from conventionally-bred animals.

Agricultural Biotechnology

Lack of predictability, excessive data requirements, and delays in the EU's approval process for genetically engineered (GE) crops have prevented GE crops from being placed on the EU market even though the agricultural biotechnology products have been approved (and grown) in the United States. Decades of data and experience demonstrate the safety of these crops. Moreover, the length of time taken for EU approvals of new GE crops appears to be increasing.

As of January 2019, the United States is tracking 66 agricultural biotechnology product applications (including renewals) of corn, soybean, canola, sugar beet, and cotton submitted to the EU. Of those applications, 49 are waiting for a scientific review by the European Food Safety Authority (EFSA) and 17 are waiting approval action by the Commission.

In 2018, the Commission authorized five GE products for food or feed import use: four corn (two were renewal authorizations) and one sugar beet renewal. While these new authorizations and renewals are welcome, these non-renewal approvals took an average of six years to complete from the time the applications were submitted. The EU's own legally prescribed approval time for biotechnology imports is 12 months (six months for the review with EFSA and six months for the political committee process (comitology)). USDA estimates that the lengthy EU approval process (average 7.5 years) and resulting asynchronous approvals has resulted in an annual loss of approximately $2 billion per year to U.S. agriculture.

Exports of U.S. corn and rice to the EU continue to be adversely impacted. Due to extensive EU approval delays of GE corn products, industry continues to express concerns that exports containing a low-level presence (LLP) of unapproved GE crops are at risk (LLP is the result of asynchronous approvals, where the GE product is approved and cultivated in the country of export, yet not approved for use in the country of import). For instance, the United States continues to export distillers' dried grains (DDGS) and corn gluten feed (corn byproducts), yet such shipments could be disrupted at any moment by an LLP incident. Although three rice biotechnology products (LL601, LL62, and LL06) are approved for cultivation in the United States, no GE rice varieties are grown for commercialization. In 2006, due to an exposure of LL601 to commercial channels before it was approved for use by U.S. producers, the EU suspended progress on the approval of LL62. Since that time, rice exports to the EU from the United States remain well below former levels and commercial uncertainty continues with LLP concerns. The application for rice biotechnology product LL62, which was originally requested in the EU in 2004, has been pending with the Commission since 2007.

The United States continues to work with the EU to support trade in corn byproducts and rice, but success will depend on the EU addressing the larger issue of delays in the biotechnology approval process. The United States continues to urge the EU to participate in discussions of a practical approach to LLP under the auspices of the Global Low-Level Presence Initiative.

On July 25, 2018, the CJEU ruled that gene-edited crops are subject to the same onerous barriers associated with EU regulations implemented under EU Directive 2001/18/EC (commonly termed the "GMO Directive"). The EU has not yet developed mechanisms for implementing the CJEU judgment. The judgment is anticipated to further exacerbate and expand existing agricultural trade barriers to innovative agricultural products.

Pathogen Reduction Treatments

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the Commission. U.S. exports of beef, pork, and poultry to the EU have been significantly hurt, because the Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are antimicrobial rinses used to kill pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by USDA, after establishing their safety on the basis of scientific evidence.

In 1997, the EU began blocking imports of U.S. products that had been processed with PRTs, which have been safely used by U.S. meat producers for decades. After many years of consideration and delay, in May 2008 the Commission prepared a proposal to authorize the use of the four PRTs during the processing of poultry, but imposed unscientific highly trade restrictive conditions with respect to their use. Member States rejected the Commission's proposal in December 2008.

In June 2013, the U.S. Department of Agriculture (USDA) submitted an application dossier for the approval of peroxyacetic acid (PAA) as a PRT for poultry. In March 2014, EFSA published a favorable scientific opinion on the safety and efficacy of PAA solutions for reduction of pathogens on poultry carcasses and meat. After a long period of inaction, the Commission eventually put forward the authorization of PAA as one part of a three-pronged strategy to mitigate campylobacter in poultry. It later withdrew the proposal from the Standing Committee agenda in December 2015, citing lack of evidence of PAA's efficacy against campylobacter. The Commission has no plans to put forward the proposal for approval at the Standing Committee at this time.

The United States believes the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs, and the United States will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry.

In March 2017, the National Pork Producers Council submitted an application to the Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the Commission in September 2017. EFSA published its evaluation in December 2018, confirming the safety of the use of acetic acid and lactic acid in pork processing. The United States will continue to engage the EU regarding the safe use of PRTs in poultry, pork, and beef processing as an effective tool to improve food safety.

Certification Requirements

EU certification requirements are limiting U.S. agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts, adding unnecessary costs to the movement of exports in Europe, irrespective of whether these goods are destined for commercial sale in the EU, transiting through the EU, or even intended for cruise ships or U.S. military installations located in the EU. These requirements often appear inconsistent with international standards and to have been implemented without scientific evidence or a risk assessment. Moreover, the certificates are often very complex and burdensome to the point that it is very difficult to verify the applicable certification requirements. For example, the level of detail required on the certificate (*e.g.*, the specific attestation language) necessitates a multitude of forms for each product containing references to multiple levels of EU legislation that in turn cites other legislation. This creates enormous confusion and burden for manufacturers and exporters, as well as U.S. regulatory agencies, EU Member State authorities, and EU importers. Codex guidance on certifications lays out the minimum amount of information necessary to ensure the safety of the product being traded. The United States continues to engage the EU in various international fora and bilaterally to find a resolution of these concerns regarding the EU's certification requirements.

Somatic Cell Count

Somatic cell count (SCC) refers to the number of white blood cells in milk. The count is used as a measure of milk quality and an indicator of overall udder health; however, it does not have any bearing on the safety of the milk itself. Since April 1, 2012, the EU has required imports of dairy products that require EU health certificates to also comply with EU SCC requirements. Specifically, the EU requires certification to establish that the SCC does not exceed 400,000 cells per milliliter, a threshold that is significantly lower than the U.S. requirement for Grade A milk of 750,000 cells per milliliter. The certification necessary to meet the EU requirement is burdensome, requiring farm-level sampling and a Certificate of Conformance. Accordingly, while U.S. dairy products can continue to be shipped to the EU, the EU's SCC requirements hinder trade by adding unnecessary costs. The United States continues to engage the EU regarding the SCC requirement in the appropriate technical working groups.

Animal Byproducts, Including Tallow

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials (category 1 and 2 materials). Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products as being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts.

Several Member State border inspection posts have already begun to block consignments of various technical blood products.

Tallow exported to the EU must meet criteria that do not appear to be scientifically justified and significantly exceed the recommendations of the OIE. The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from this tallow contain no more than a maximum level of insoluble impurities consistent with international recommendations. Specifically, tallow with less than 0.15 percent insoluble impurities does not pose any risk of bovine spongiform encephalopathy (BSE). Tallow under these specifications should be allowed for import without any animal health-related requirements according to the OIE's international – and scientifically based – recommendation.

Used cooking oil (UCO) is used for the production of biodiesel. Individual Member States implement national measures for the importation of UCO. However, in 2016 the EU circulated a draft regulation to harmonize requirements EU-wide. The draft requirements appear to follow the EU's non-science based approach regarding importation of tallow and would curtail U.S. exports of UCO to the EU. The United States provided feedback in writing to the EU on their proposed measure and is working with the EU to resolve its concerns.

Live Cattle

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU on route to third countries, due to EU certification requirements for several bovine diseases. Although the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) successfully resolved issues related to bovine leucosis and bluetongue in 2003, the EU subsequently established certification requirements for BSE that precluded U.S. exports. Since then, the EU model certificate has been amended to align the BSE requirements with the OIE Code. Although the United States can now meet the BSE certification requirements, U.S. exporters remain blocked because the United States and EU have not agreed on the conditions and format for the export certificate. APHIS continues to work with the EU to resolve the remaining import health conditions and agree on a mutually acceptable certificate through the U.S.-EU Animal Health Technical Working Group.

Certification Requirements for Marinated Pork

The EU meat preparations certificate for marinated pork includes the condition that the product must be frozen. The United States is concerned that this condition has resulted in a *de facto* ban on shipments of chilled marinated pork, which by definition is not frozen. The United States will continue to engage with the EU on this issue.

Specified Risk Materials Certification Requirement

The EU has a different definition of specified risk materials (SRM) than the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies. The EU requires that materials exported to the EU meet the EU's SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although the United States has been recognized by OIE as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The SRM requirement thus unnecessarily impedes U.S. exports of ruminant origin animal byproducts and would potentially limit the market for ovine/caprine meat were other market impediments removed.

This requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU required production controls in the non-hormone treated cattle (NHTC) program already provides the necessary verifications regarding the history of the animal. The United States has requested the removal of the EU's "born and raised" requirement for all U.S. commodities. Consistent with the recommendations of OIE, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in the appropriate bilateral technical working groups and the WTO SPS Committee.

Agricultural Chemicals

Hazard-based Cutoff Criteria - Categorization of Compounds as Endocrine Disruptors

Regulation (EC) 1107/2009, which governs the registration of crop protection products, establishes several hazard-based "cut-off" criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. For such products, the EU will not perform a risk assessment. Rather, it will discontinue EU authorization for a particular product at the time of re-approval, as has already happened for some substances, or, in the case of new products, declare them to be ineligible for authorization, based solely on their intrinsic properties, without taking into account important risk factors such as level of exposure or dosage. The United States is concerned that increasing numbers of safe and widely-used substances will not be reapproved or not have reasonable import tolerances set for their use due to these arbitrary cut-off criteria when current registrations expire.

One category of crop protection products subject to this hazard-based approach includes substances classified as endocrine disruptors (EDs). EDs are naturally occurring or man-made substances that may mimic or interfere with hormone functions. While the United States has programs to evaluate possible endocrine effects associated with the use of certain chemicals to ensure protection of public health and the environment, the United States is concerned that the EU appears to be contemplating approaches to regulating these compounds that are not based on scientific principles and evidence, thereby restricting trade without improving public health.

On June 15, 2016, the Commission presented two draft legal acts outlining scientific criteria to identify EDs in agricultural products, one falling under the Biocidal Products legislation and the second under the Plant Protection Products legislation. In the draft legal acts, the Commission proposes to use the WHO definition of endocrine disruptors and include examination of all available information in order to base decisions on weight of evidence. However, the proposal does not specifically state that it will include consideration of other hazard characterizations such as potency, severity, and reversibility in these examinations. Without such considerations, the EU may potentially block substances regardless of the actual level of risk to human health.

In December 2016, the Commission produced a revised proposal that split the issue into two components: establishing criteria to classify a substance as an endocrine disruptor; and a proposal to amend the derogation to allow for substances classified as endocrine disruptors to be used under limited circumstances. There was no consensus among Member States at the December 2016 meeting on the Commission's proposal. For the February 2017 Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) meeting, the Commission chose to put only the proposal for the criteria up for discussion. However, the SCoPAFF again failed to reach a qualified majority on the criteria proposal. Many of the Member States asked for the re-introduction of the derogation that would allow for maximum residue levels and import tolerances to be set if a critical plant protection product is banned under the criteria.

In July 2017, the SCoPAFF voted to approve the proposed criteria included in the Commission's proposal. Many countries supported the approval because the Commission committed to discussing the question of the derogation once the criteria were adopted. However, as the criteria went through the regulatory process with scrutiny, the Parliament in October 2017 rejected the criteria on legal grounds, sending the draft back to the Commission for further revision. On December 14, 2017, Member States voted to adopt the newly revised criteria. The Commission sent the draft Regulation to the European Parliament and the Council for three months of scrutiny, which lasted until April 9, 2018, in order to examine the draft measure and raise any objections (comitology procedure with scrutiny). The Commission then officially adopted the criteria, since neither the Parliament nor the Council raised objections. On April 20, 2018, the Commission published Regulation 2018/605, identifying endocrine disrupting properties under Regulation 1107/2009 on plant protection products in the Official Journal. The criteria to identify endocrine disruptors apply since November 10, 2018, to all on-going and future evaluations of active substances used in plant protection products. (The biocidal products criteria were adopted earlier and have applied since June 7, 2018).

In June 2018, the ECHA and the EFSA published a technical guidance document to implement the criteria. As of November 2018, the criteria for both biocides and pesticides are in force. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

Pesticide Maximum Residue Limits

MRLs and import tolerances are established under separate legislation, Regulation (EC) 396/2005, which is risk-based rather than hazard-based. The United States is concerned that for substances not approved under Regulation 1107/2009 due to the cut-off criteria, the EU has the authority and mandate to ignore the risk assessment process established under Regulation 396/2005 and automatically reset MRLs and import tolerances to the default level of 0.01 mg/kg, which is not commercially viable. The EU is conducting an evaluation of existing legislation on plant protection products and pesticide residues, through a Regulatory Fitness and Performance process. Through this process, it is unclear whether the EU may choose to adjust Regulation 396/2005 to bring it in line with the hazard-based principles of Regulation 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU resets the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase. Given that the hazard criteria are now in place, the United States is monitoring the EU approach to establishing import tolerances for substances. According to industry estimate, U.S. exports valued at over $5 billion and global trade amounting to $75 billion are at risk of significant damage. Discontinuing the use of critical substances without a proper science-based risk assessment to provide justification would have serious adverse effects on agricultural productivity and global markets.

In January 2019, the EU published the Implementing Regulations 2019/38 and 2019/91, setting MRLs for several active substances at the limit of detection (LOD), ignoring U.S. comments requesting that they reconsider. These regulations include LOD designations for Iprodine and Buprofezin, two important crop protection products for tree nuts, wine grapes, berries, and other fruits, which in total represent over $3 billion in U.S. exports to the EU.

Agriculture Biotechnology Cultivation Opt-Out

In March 2015, the EU adopted a directive that allows Member States to ban the cultivation of GE plants in their respective territories for non-scientific reasons. Under the transitional measures, the Member States had until October 3, 2015, to request to be excluded from the geographical scope of the authorizations already granted or in the pipeline. Nineteen Member States “opted-out” of GE crop cultivation for all or part of their territories. These decisions have not led to a change in the field, since none of the five Member

States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted-out.[11] As of 2017, only Portugal and Spain cultivate GE corn.

Seventeen Member States and four regions in two countries have opted-out of cultivation using biotechnology seeds. The 17 Member States that requested their entire territory to be excluded from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. The four regions are Wallonia in Belgium and Northern Ireland, Scotland, and Wales in the United Kingdom. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were in the pipeline in 2015, apart from Denmark and Luxembourg that have only banned MON810 and three of the seven varieties of corn in the pipeline.

Member State SPS Measures

Austria: The Austrian government implemented its right to opt-out of GE cultivation through the Biotechnology Cultivation Framework Law, promulgated in August 2015. Austria also maintains earlier cultivation bans (most importantly, Monsanto's MON810 corn), although such bans have been rendered obsolete by the opt-out clause and the 2015 legislation. In addition, Austria's import and processing bans for Monsanto GT73 rapeseed and Monsanto 863 corn are still in force.

Bulgaria: Bulgaria's entire territory is excluded from the geographical scope of agricultural biotechnology applications. In 2015, Bulgaria decided to ban entirely the cultivation of MON810, seven varieties of corn, soybeans 40-3-2, and carnation Moonshadow 1. The ban also extended to field research.

France – Ban on Food Packaging Containing Bisphenol A: The production or import of food containers containing Bisphenol A (BPA) has been banned in France since January 1, 2015. The law applies to all products manufactured using BPA, where BPA is "intentionally" used to manufacture part or all of the final product, or where the BPA comes from an environmental or adventitious source. The French law contradicts a January 21, 2015, EFSA opinion, which stated that BPA does not present any risk to consumers. Noting differences in interpretation concerning the methodological limitations of toxicity studies on BPA, the French Agency for Food, Environmental and Occupational Health and Safety recommended on October 12, 2017, that specific objective criteria be defined and harmonized between EFSA and national health agencies, taking into account the new EFSA assessment launched in 2017 on risks associated with BPA.

France – Ban on Cherries from Countries that Authorize Dimethoate: On April 10, 2018, France reinstated a ban on the import and sales of cherries from countries where dimethoate – a pesticide and acaricide that kills mites and ticks – can be used on cherries and cherry trees. France's decision followed a ban on domestic production of this chemical compound, which France claims is harmful to human health. France imports roughly one-fifth of its cherry consumption, the bulk coming from EU countries including some (such as Germany and Spain) that have already banned dimethoate. Under the ban, the United States is not allowed to export cherries to France, even if the producer has never applied dimethoate. This ban ignores information provided by the United States documenting that dimethoate is not used in certain cherry producing states, or that it is used postharvest when there is no possibility for residues, and thus no risk to consumers. The dimethoate ban potentially sets a precedent for France to unilaterally ban products from countries using compounds approved for use in the EU but banned only in France under safeguard measures intended for short-term emergency cases. For example, France in late 2017 announced its intention to ban glyshosate in three years, despite the fact that the EU reauthorized the chemical's use for five years.

[11] USDA FAS, GAIN Report: EU28: 19 European Countries Restrict the Cultivation of GE Crops.

Greece: Greece has banned cultivation under various procedures and has opted out of GE corn cultivation under EU Directive 2015/412. Greece does not have a coexistence policy and maintains a *de facto* ban on both the cultivation and importation of GE products and has yet to adopt national legislation to officially implement the cultivation "opt-out" provision.

Poland: The Feed Act of 22 July 2006 (OJ 2006 No. 144, item 1045) includes a prohibition on the manufacture, marketing, and use of GE feed and GE crops intended for feed use. The Polish parliament voted to prolong this suspension until January 1, 2019, and as of March 2019 was poised to extend it for an additional two years until January 1, 2021. Poland recognizes the July 2018 CJEU ruling that new breeding techniques are considered as GE; however to date, no Polish legislation has been implemented to enforce this decision.

SUBSIDIES

Various financial transactions and equity arrangements throughout the EU raise questions as to the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft.

Beginning in June 2014, the Commission announced that certain transfer pricing rulings given by Member States to particular taxpayers may have violated EU restrictions on state aid. The EU initiated a series of state aid investigations primarily involving U.S.-headquartered companies. As the U.S. Department of the Treasury explained in a white paper dated August 24, 2016, the United States remains deeply concerned with the Commission's approach in these investigations. This approach is new and departs from prior EU case law and Commission decisions. The Commission's actions also undermine the international consensus on transfer pricing standards, call into question the ability of Member States to honor their bilateral tax treaties, and undermine the progress made under the OECD/G20 Base Erosion and Profit Shifting project.

Government Support for Airbus

Over many years, Belgium, France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed between 33 percent to 100 percent of the development costs (launch aid) of all Airbus aircraft models and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, in addition to political and economic pressure on purchasing governments.

The EU aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. Member State governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including €751 million ($851 million) spent by the city of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 "superjumbo" aircraft. French authorities also spent €182 million ($206 million) to create the AeroConstellation site, which contains additional facilities for the A380. After having given the Airbus A380 more than $5 billion in subsidies, the relevant Member State governments have also provided launch aid in comparable amounts for the newer Airbus A350 XWB aircraft.

Airbus SAS, the successor to the original Airbus consortium, is owned by the Airbus Group, now the second largest aerospace company in the world. This entity was previously known as the European Aeronautic, Defense, and Space Company (EADS). The name change accompanied a reorganization of the company's ownership structure, resulting in the French and German governments each owning up to 11 percent of the shares, the Spanish government approximately 4 percent, and the remaining approximately 72 percent of shares trading on open markets. The reorganization also ended these governments' rights to veto strategic decisions and to appoint directors to the Airbus board. Instead, the governments only have the right to veto board members appointed by the company. The Airbus Group has accounted for more than half of worldwide deliveries of new large civil aircraft in recent years and is a mature company that should face the same commercial risks as its global competitors.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that Member State subsidies were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011. On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules. The WTO compliance panel issued its report on September 22, 2016, finding that the Member States had not withdrawn the past subsidies conferred by $17 billion in past launch aid to Airbus, and that the launch aid of nearly $5 billion for the A350 XWB was also contrary to WTO rules. The EU appealed that finding to the WTO Appellate Body. On appeal, the WTO Appellate Body confirmed that EU financing of Airbus's A380 and A350 XWB aircraft is subsidized and continues to be in breach of the EU's and the relevant Member State's WTO obligations.

Government Support for Airbus Suppliers

Member State Measures

Belgium: The Belgian federal government coordinates with Belgium's three regional governments on the funding of Non-Recurring Costs to be financed by Belgian manufacturers in order to be able to supply parts to Airbus. The Belgian Government has, in this context, decided in 2000 to set aside a budget of €195 million ($220.9 million) for Belgian industrial participation in the A380 program and in 2008, a budget of €150 million ($170 million) for Belgian industrial participation in the A350 XWB program. Belgium has always stated that these were refundable advances, partially covering nonrecurring costs in accordance with the European regulations. Both in 2006 and in 2009, the Commission initially disputed that view, but later acquiesced. Only industrial research or experimental development projects linked to the A350 XWB and A380 programs can be (partially) financed through reimbursable loans in accordance with EU regulations. For the A380-program, the average intervention level is 47 percent and for the A350 XWB program, 54 percent. These interventions are not considered grants but reimbursable advances based on sales forecasts for each aircraft. This constitutes as such a risk-sharing between the related companies and the Belgian government. Statistics indicate that the total reimbursement level is more than 60 percent of the total sum of state interventions for all the Airbus-programs, excluding the most recent ones (A380, A350 XWB, and A400M), where production started relatively recently. This level is also influenced by elements outside the control of the Belgian authorities (*e.g.*, Airbus stopped the production of A340 much earlier than initially planned).

Eurostat, the Commission's statistical unit, notified the Belgian government in 2014 that these amounts should not be considered as reimbursable advances but subsidies, because they were never totally reimbursed. Beginning in 2016, Belgian federal and regional governments were supposed to include the Airbus interventions as subsidies in their budgets, but that has not been the case to date.

For the A350 XWB and A380 programs, the price distortion resulting from Belgian subcontractors is estimated to be a minimum of €370 million ($419 million). For the A400M program, the Belgian federal government in 2016 agreed on a €45 million ($51 million) grant for the 2017-2020 period.

France: In addition to the seed investment that the French government provided for the development of the A380 and A350 XWB aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as airplanes, aircraft engines, helicopters, and onboard equipment. In February 2013, the government confirmed €1.4 billion ($1.6 billion) in reimbursable advances for the A350 over the period 2009-2017 and a similar scheme for the helicopter X6 to be built by Airbus Helicopter. The government's 2019 budget includes €212 million ($240.1 million) in reimbursable advances for aeronautical/aviation products, up from €177 million ($200.5 million) in the 2018 budget. French appropriations for new programs include €92.6 million ($104.9 million) in support of research and development in the civil aviation sector in 2019, up from €102.7 million ($116.3 million) in 2018.

In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group announced the launch of the Aerofund II equity fund, capitalized with €75 million ($85 million) destined for the French aeronautical sector. The equity fund's objective is to support the development of small and medium sized subcontractors that supply the aeronautical sector. The Aerofund III equity fund was launched in 2013 with a fundraising target of €300 million ($340 million) and an objective of becoming the leading aerospace industry investment fund in Europe.

Germany: Between 2010 and 2015, the German government provided Airbus with a €1.1 billion ($1.2 billion) loan package for the new A350 XWB wide-body jet. The loan runs until 2031 and covers deliveries of 1,500 aircraft. In addition to the A350 XWB loan package, Airbus continues to receive funds from the German government's aeronautics research program for a number of projects. In its most recent coalition agreement (2018), the German government pledged to increase funding for civil aeronautics.

Spain: On April 6, 2018, the Spanish government re-authorized the Ministry of Economy, Industry, and Competitiveness to grant a refundable advance to Airbus of €12.7 million ($14.4 million), for Spain's continued participation in the development program for the A350 XWB aircraft. Spain's contribution has been re-authorized since 2009 and will continue under the current authorization through 2019. In May 2016, the Spanish government approved a Royal Decree regulating the direct granting of refundable advances to Airbus Operations, which modified the time scope of the old advances regulated in another Royal Decree of November 6, 2009, in order to extend its period of validity until 2019. In 2015, the industry had a turnover of €9.7 billion ($11 billion) and directly employed approximately 54,400 people.

GOVERNMENT PROCUREMENT

Government procurement is governed by EU public procurement directives. In 2014, the European Parliament approved revised directives addressing general public procurement and procurement in the utilities sector. The Parliament also approved a new directive on concessions contracts. Member States were required to transpose the new directives into national legislation by April 2016.

The directive on procurement procedures in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. This directive requires open and competitive bidding procedures, but it permits Member States to reject bids with less than 50 percent EU content for tenders that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water); energy (gas and heat); urban transport (urban rail, automated systems, trams, buses, etc.); and postal services. Subsidiaries of U.S. companies may bid on all public procurement contracts covered by the EU directives.

The EU is a member of the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA.

The EU's lack of country of origin data for winning bids makes it difficult to assess the level of U.S. and non-EU participation. Nevertheless, a 2011 report commissioned by the EU noted that only 1.6 percent of total Member State procurement contracts were awarded to firms operating and bidding from another Member State or a non-EU country, demonstrating that in practice the value of direct cross-border procurement awards even among Member States was very small. The same study said that U.S. firms not established in the EU received just 0.016 percent of total EU direct cross-border procurement awards.

Member State Measures

Lack of transparency in certain Member State public procurement processes continues to be an almost universally cited barrier to the participation of U.S. firms. U.S. firms seeking to participate in procurements in Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Romania, Slovakia, and Slovenia have all voiced concerns over a lack of transparency, including with respect to overly-narrow definition of tenders, language and documentation barriers, and implicit biases toward local vendors and state-owned enterprises. The Commission's 2014 EU Anti-Corruption Report asserts that Member State public procurement is one of the areas most vulnerable to corruption.[12] Additional Member State-specific trade barriers to U.S. participation in public procurement processes are cited below.

Bulgaria: Stakeholders report that the public procurement process in Bulgaria is frequently discriminatory and unfair. There are persistent complaints that tenders are too narrowly defined and are tailored to a specific company. For example, a U.S. company seeking to sell nuclear fuel to Bulgaria's state-owned Kozloduy Nuclear Power Plant (KNPP) has faced substantial barriers in seeking to enter into competition with a Russian state-owned company, which is the incumbent supplier of nuclear fuel to the KNPP. Though the Russian supplier completed a new fuel licensing procedure quietly and free of any opposition in 2016, the same procedure for the U.S. company has been stalled by periodic artificial regulatory setbacks. Delays encountered by the U.S. company have jeopardized its chances to participate in a 2020 multi-year fuel supply tender for the KNPP.

France: France continues to maintain ownership shares in several major defense contractors (11.08 percent of Airbus, formerly EADS, shares; 14 percent of Safran shares and 21.9 percent of its voting rights; and 25.97 percent of Thalès shares). It is generally difficult for non-EU firms to participate in French defense procurement, and even when the competition is among EU suppliers, French companies are often selected as prime contractors.

Greece: U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements on U.S. firms.

Italy: U.S. firms continue to cite widespread corruption in procurements, especially at the local level. In 2012, the Italian parliament approved an anti-corruption bill that introduced greater transparency and more stringent procedures to the public procurement process. Law 69/2015, an additional anti-corruption law passed in 2015, has strengthened the powers of the National Anti-Corruption Authority, and sanctions for offenses committed against the Public Administration became more severe. Law 69/2015 also inserted Article 322 ("Riparazione pecuniaria") in the Criminal Code, which provides for the restitution of assets illegally obtained by public officers. According to Transparency International Italia's October 2017 Anticorruption Report, Italian legislation to combat corruption is adequate, though enforcement remains weak. The report cites the lack of adequate whistleblower protection and the absence of laws regulating lobbying activities as key challenges for anti-corruption enforcement. However, a whistleblower protection law was approved by the Italian parliament in November 2017, shortly after the report's publication.

[12] Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, February 3, 2014.

Poland: U.S. firms reported disappointment that "lowest cost" remains the main criterion Polish officials use to award contracts, often overlooking other important factors in bid evaluation, such as quality, company reputation, and prior experience in product and service delivery. However, there appeared to be some improvement in this area in 2018, particularly as it relates to the energy sector. Defense companies indicate that the Ministry of Defense uses statutory exclusions bypassing tendering procedures in signing contracts and requests significant offsets and technology transfers.

Slovenia: U.S. firms report short timeframes for bid preparation, tendering documentation that is difficult to understand, and opacity in the bid evaluation process as major impediments. Slovenia's quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its Digital Single Market (DSM) Strategy, on September 14, 2016, the Commission issued a proposed Directive on Copyright in the Digital Single Market (Directive on Copyright) with the stated goal of addressing legal uncertainty for both rights holders and users with regard to certain uses of copyright-protected works in the digital environment.

The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the draft Directive on Copyright, and will continue to engage with various EU entities as appropriate to address the equities of U.S. stakeholders.

In January 2016, a new trademark directive (2015/2436) entered into force. Member States were given three years to transpose the directive into their national laws. A trademark regulation (2015/2424) also entered into force in early 2016. The United States continues to work with the EU and its Member States on trademark issues and is following implementation of the trademark package closely.

Regarding trade secrets, a "Directive on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure" (2016/943) was adopted by the Parliament and Council on June 8, 2016. The aim of the directive is to standardize the national laws of Member States against the unlawful acquisition, disclosure, and use of trade secrets. The directive also harmonizes the definition of trade secrets. Under the Directive, Member States had to bring into force the laws and administrative provisions necessary to comply with the directive by June 2018. The United States is monitoring the implementation of the directive closely.

With respect to Geographical Indications (GIs), the United States remains troubled with the EU system that provides overbroad protection of GIs, adversely impacting the protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets. Regulation 1151/2012, for example, contains numerous problematic provisions with respect to the protection and enforcement of PDOs and PGIs. Troubling provisions include those governing the scope of protection of PDOs and PGIs, including expansive rules addressing evocation, extension, co-existence, and translation, among others, which not only adversely affect trademark rights and the ability to use common names, but also undermine access to the EU market for U.S. rights holders and producers.

As confirmed in the recital to Regulation 1151/2012, this measure also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce in their markets lists of specific EU GIs, according to EU rules, with often only limited due process requirements to safeguard existing producers, rights holders, consumers, importers, and other interested parties.

Regulation 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/06, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Regulation 1151/2012 sped up the registration procedure for registering GIs, reduced the opposition period from six to three months, and expanded the types of products capable of being registered as a GI.

The United States continues to have concerns about the EU's GI regulations and monitors carefully its implementation and effects on bilateral trade. The United States does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such intellectual property rights should be evaluated independently on their merits, based on the unique circumstances of each country. The United States is also concerned by the EU's attempts to restrict common terms for wine in third country markets to Council Regulation (EC) 479/08, which relates to wines, and to Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms for wine sector products. The United States is carefully monitoring the implementation of each of these regulations.

The EU also continues to consider expanding the scope of GI protection in the EU to include non-agricultural products. At present, EU law only harmonizes the protection of GIs in the EU for wines, spirits, foodstuffs, and agricultural products. On July 15, 2014, the Commission issued a green paper entitled "Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products" (COM (2014) 469 final). This was followed by the Parliament's adoption of a resolution inviting the Commission to propose legislation providing for such extension. The United States is closely monitoring EU proposals and developments relating to the possible extension of GI protection beyond existing product categories.

The United States remains extremely concerned by the conduct and outcome of the 2015 World Intellectual Property Organization (WIPO) negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the Commission and by several EU Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights, and to depart from longstanding WIPO practice regarding consensus-based decision-making in this international organization. Likewise, the resulting text – the Geneva Act of the Lisbon Agreement – raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms.

Member State Measures

Member States generally maintain high levels of IPR protection and enforcement. While some Member States made improvements in 2018, the United States continues to have concerns with respect to the IPR practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IPR protection and enforcement, including through the annual Special 301 review process.

Austria: With regard to trade secrets, U.S. companies report gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles, that limit efforts to effectively combat trade secret theft and misappropriation. The Austrian government has drafted legislation to strengthen protections and implement the EU Trade Secrets Directive (expected to be adopted by Parliament in 2019). The new law is viewed favorably by the business community. Austria's Anti-Piracy Association, also representing U.S. audio-visual copyright holders, explains in its 2018 landscape report that law enforcement cannot act *ex officio* in cases of IP infringements (*e.g.*, online piracy); hence, rights holders encounter below-average sentencing for infringers.

Bulgaria: As a result of notable improvements on intellectual property rights (IPR) protection and enforcement, Bulgaria was removed from USTR's Watch List in the 2018 Special 301 Report. For example, Bulgaria passed amendments to its copyright law in March 2018 to facilitate the collection of copyright royalties by collective management organizations and strengthen government oversight. Bulgaria also participated in a EUROPOL operation to take down one of the largest Internet Protocol TV piracy networks in the region. However, enforcement concerns remain with respect to high levels of online piracy, inadequate prosecution efforts, judicial delays, and insufficient criminal penalties.

Czech Republic: While sale of copyright-infringing media in physical form continues at a modest level in outdoor markets, the Czech Republic has not been listed in the Special 301 Report since 2009. Piracy in the Czech Republic, as elsewhere, has migrated primarily online, where right holders have identified several online sites, including cyberlockers that feature pirated material for download and streaming. Right holders have had positive outcomes in a number of instances when they have gone to court, although websites often reappear under a new name. Also commendable is the Czech government interagency IPR task force, led by the Ministry of Industry and Trade, which effectively coordinates policy and oversees implementation of IPR laws and regulations.

France: Although online piracy continues to be a concern, most commonly via streaming, the French government's efforts to reduce online piracy have yielded some successes. While civil proceedings in French courts continue to provide the most effective channel for enforcement against piracy, insufficient sentencing in criminal proceedings remains a problem. The Ministry of Culture (MOC) announced its intent to use the authority of France's digital piracy watchdog HADOPI (Haute Autorité pour la Diffusion des Oeuvres et la Protection des Droits sur Internet), established in 2009, to help implement the EU's revised Audiovisual Media Services Directive.

Greece: Greece remained on the Watch List in the 2018 Special 301 Report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken to address online piracy. However, inadequate IPR enforcement continues to pose barriers to U.S. exports and investment. Key issues cited in the 2018 Special 301 Report include widespread copyright piracy and limited and inconsistent IPR enforcement. The Greek public sector, including the Ministry of Defense, continues to be identified by stakeholders as a significant consumer of pirated U.S. software.

Greece's copyright agency launched a new enforcement mechanism in 2018 to address online piracy, which fast-tracks requests by right holders to take down unlicensed content. This new mechanism became operational on September 3, and issued its first takedown notices on November 7, 2018. Greece has introduced draft legislation to further address online piracy but the Greek parliament has yet to pass the legislation.

Italy: Italy passed regulations to combat online piracy violations in 2014. These regulations established a "notice and takedown" system managed by Italy's communications regulator. In 2018, authorities adopted new measures to prevent piracy sites from circumventing actions taken against them under these regulations.

Poland: Stakeholders continue to identify copyright piracy online and counterfeit seeds as significant concerns in Poland and noted inconsistent enforcement on the part of regional police forces.

Romania: Romania remained on the Watch List in the 2018 Special 301 Report. While some categories of infringement, such as street sales of counterfeit goods and piracy of optical discs, have continued to decline in past years, online piracy remains a serious concern. Some notorious pirate sites have connections to Romania. Criminal IPR enforcement remains generally inadequate, with questions arising regarding Romania's commitment to resolute enforcement, reflected in reduced cooperation among enforcement authorities and a lack of meaningful sanctions. Additional resources are also needed to increase enforcement in Romania, such as increased training of law enforcement and prosecutors.

Spain: Spain was the subject of a Special 301 Out-of-Cycle Review from 2013 to 2017, after Spain was removed from the Watch List in the 2012 Special 301 Report. In 2015, Spain took several positive legislative steps, including amending its civil and criminal copyright laws. In December 2015, Spain's Prosecutor General also issued a new circular with respect to copyright piracy over the Internet. Spain implemented these amendments and saw piracy rates fall for the first time in 2017. However, counterfeit sales in physical markets remain a concern, including reported widespread sales by informal street vendors in Barcelona other major cities.

Sweden: Sweden continues to grapple with widespread online piracy. Government enforcement efforts have shown positive results, and right holders report that court cases to enforce their rights are successful in the vast majority of cases. Meanwhile, levels of illegal streaming remain high. As a result, the movie, television, and live sports telecast industries continue to lose revenue. However, legal sales of music and film have increased dramatically in recent years, in part because of Swedish enforcement efforts and increased awareness of the importance of IPR to Sweden's economy and culture. In addition, the Patent and Market's Court, Sweden's IPR-court, issued a ruling in October 2018, ordering a major internet service provider (ISP), Telia, to take action against four IPR-infringing sites. This puts Sweden on par with neighboring Denmark and Norway, where Telia is also a major ISP, and where it has been required to take action against similar, infringing sites for several years.

SERVICES BARRIERS

Telecommunications

Electronic Communications Code

The EU regulates the telecommunications sector through five directives and one regulation: the Framework Directive; the Access Directive; the Authorization Directive; the Universal Service Directive; the Directive on Privacy and Electronic Communications; and the Regulation on Roaming. Each Member State has its own independent national regulatory authority (NRA) for the telecommunications sector. The Body of European Regulators for Electronic Communications (BEREC) consists of the heads of these independent regulators and provides advice to the Commission regarding measures affecting telecommunications.

In 2018, the EU adopted a "European Electronic Communications Code" (EEC Code) that updates and merges four of the existing telecommunications directives (Framework, Authorization, Access, and Universal Service) into a single measure that includes rules on network access, spectrum management, communication services, universal service, and institutional governance. EU Member States will have two years to adopt any provisions necessary to implement the new EEC Code. The Commission asserts that the EEC Code will promote infrastructure competition, greater investment in high-speed broadband networks, and greater harmonization of spectrum management across the EU. U.S. suppliers have welcomed the

Commission's attempt to reduce market fragmentation, promote the development and introduction of innovative services, and harmonize spectrum management.

The EEC Code also extends European telecommunications regulations to "over the top" (OTT) Internet-enabled services, such as voice, messaging, and other communications applications. Most of the obligations in the EEC Code would apply to "number-based" Internet services that enable communications with mobiles and landlines. These obligations address requirements relating to access to emergency services, duration of contracts, quality of service, number portability, and switching rules for service bundles. All covered Internet services, including those that do not use public numbering, would be bound by rules on security and integrity of services that govern their risk management strategies and their reporting of security incidents to competent authorities. U.S. suppliers have expressed significant concerns with the expanded scope of EU telecommunications law and have highlighted that Internet services face low barriers to entry by new competitors, while traditional telecommunications services providers enjoy high barriers to new entry and little direct competition, thus justifying asymmetrical regulation. In addition, this extension of NRA authority to Internet services raises concerns because most traditional telecommunications services suppliers historically serve one or a limited number of Member State markets, whereas most Internet "interpersonal communications services" are available in every Member State, thereby potentially subjecting them to conflicting NRA jurisdictions.

Regulation on Privacy and Electronic Communications

In January 2017, the Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The Commission has stated that the proposed Regulation will align rules for telecommunications services in the EU with the General Data Privacy Regulation (GDPR) and cover the confidentiality of business-to-business communication and communication between individuals. The proposal gives Member State Data Privacy Authorities (DPAs) the authority to enforce its requirements. While it would remove existing inconsistencies between Member State rules, it would also expand regulatory coverage intended for traditional telecommunications services providers to OTT Internet-enabled services. U.S. suppliers have also expressed concerns that, although the proposed Directive is supposed to align the specific rules for telecommunications services with the GDPR, it actually may lead to additional and potentially conflicting requirements.

In late 2017, the European Parliament adopted its final amendments to the proposed Regulation on Privacy Regulation and Electronic Communications and voted on a mandate for the trilogue. Technical discussions in the European Council have been progressing slowly and no consensus has been reached on critical aspects of the proposal. It now appears unlikely that a deal will be struck before the end of the Commission's mandate.

International Termination Rates

One of the main cost components of an international telephone call from the United States to an EU country is the rate a foreign telecommunications operator charges a U.S. operator to terminate the call on the foreign operator's network and deliver the call to a local consumer. The WTO General Agreement on Trade in Services Telecommunications Services Reference Paper includes disciplines designed to ensure that the charge for terminating a call on a network of a major supplier (which in most countries is the largest or only fixed-line telecommunications supplier) is cost-oriented. This ensures that a major supplier is not able to gain an unfair competitive advantage from terminating foreign or competitive carriers' calls. It also helps to ensure that U.S. carriers can offer reasonable and competitive international rates to consumers located in the United States. Termination rates for both fixed and wireless traffic should be set in relationship to the costs of providing termination, as would be reflected in a competitive market. Where competition does not discipline the costs of termination services, governments should ensure that the termination rates charged by its operators are not unreasonably higher than cost.

Most of the EU Member State NRAs permit major suppliers to charge different rates for the termination of international traffic originating outside of the EU, or in some cases outside the European Economic Area (EEA, which is comprised of the EU plus Iceland, Liechtenstein, and Norway), than for international traffic between sovereign states within the EU or EEA. A few Member States prohibit such differentiation, including Denmark, Ireland, Romania, Sweden, and the United Kingdom. Several other Member States, including Austria, France, Hungary, Luxembourg, the Netherlands, and Spain, allow for different rates based on reciprocating rates in the other country. In addition, a number of suppliers in the remaining Member States are charging U.S. suppliers differentiated rates that are higher than the rates charged for terminating traffic originating in one of the other Member States. These Member States include: Croatia, Cyprus, the Czech Republic, Estonia, Greece, Latvia, Lithuania, Poland, Portugal, and Slovenia. Neither the Commission nor BEREC have made efforts to resolve this issue.

These discrepancies in termination rates do not appear to reflect incremental costs for termination of such traffic. Termination rate increases also disadvantage enterprises in those foreign markets for which foreign communications is a key part of business (*e.g.*, traders, hotels). The United States remains concerned that the Commission and Member States appear to endorse, explicitly or implicitly, a two-tier approach to the termination of international traffic. These actions adversely affect the ability of U.S. telecommunications operators to provide affordable, quality services to U.S. consumers calling Europe and may raise questions regarding the treatment of U.S. suppliers by certain Member States.

Roaming

Germany: In November 2017, the German government imposed a regulation requiring that any devices that will be permanently located in Germany and that use a foreign telephone country code be registered with the telecommunications regulator (BNetzA). This regulation raises concerns for U.S. companies providing global machine-to-machine and Internet-of-Things services because it appears to impose additional requirements that will not apply to domestic providers of such services.

Audiovisual Services

Audiovisual Media Services Directive

On November 6, 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted. Member States will have 21 months to transpose the amendments into national legislation. The amendments updated the Directive to reflect developments in the audiovisual and video on-demand markets.

The original Directive established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so, as discussed below. The Directive did not set any strict content quotas for on-demand services, but it still required Member States to ensure that on-demand services encourage production of, and access to, "EU works." This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works, or to the prominence of EU works in the catalogues of video on-demand services.

The new rules include provisions that would impose on Internet-based video-on-demand providers a minimum 30 percent threshold for European content in their catalogs and require that they give prominence to European content in their offerings. The new Directive also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to European works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the Directive to video-sharing platforms that tag and organize content, which raised concerns among social media platforms.

Satellite and Cable Directive

The 1993 Satellite and Cable Directive (SatCab) governs certain satellite broadcasting and cable retransmission copyright issues. It was enacted to promote cross-border satellite broadcasting of programs and their cable retransmission from other Member States and to remove obstacles arising from disparities between national copyright provisions. Under SatCab's country-of-origin principle, the satellite broadcasting of copyrighted works requires the authorization of the rights holder in the Member State of the uplink station, and such rights may only be acquired by agreement.

In 2016, the Commission carried out a Regulatory Fitness and Performance review of the 1993 SatCab, with the aim of enhancing cross-border access to broadcasting and related online services across the EU. This review was followed by a Commission proposal – COM (2016) 594 – for a "Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes" (Broadcasting Regulation), on which the Commission, EU Member States, and the European Parliament reached political agreement in December 2018. The proposed Broadcasting Regulation seeks to extend the country-of-origin principle to certain online services of broadcasters, a development strongly opposed by the U.S. film and commercial television sectors. The Commission announced on December 13, 2018 that the political agreement limited the application of the country-of-origin principle to radio programs, news/current affairs programs, and broadcasting organizations' own fully financed productions. U.S. studios are particularly concerned that the proposed regulation would interfere with the ability of rights holders to continue licensing on a country-by-country basis and to tailor audiovisual content for specific cultural audiences at different price points. There is also increasing concern about the proposed expansion of mandatory collective rights management of cable retransmission to other equivalent digital retransmissions, which commercial producers view as another encroachment on freedom to contract.

Member State Measures

Several Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

France: France continues to apply the AVMSD and other content laws in a restrictive manner in order to promote local industry. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to that of EU origin must include original French-language content, which potentially restricts programming from non-French speaking Member States. Moreover, these quotas apply to both the regular and prime time programming slots, and the definition of prime time differs from network to network.

The prime time restrictions pose a significant barrier to U.S. programs in the French market. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMS Directive minimum) and 30 percent to 35 percent French-language content, but channels and services are required to increase their investment in the production of French-language content. In addition, radio broadcast quotas require that 35 percent of songs on almost all French private and public radio stations be in French. The quota for radio stations specializing in cultural or language-based programing is 15 percent. A July 2016 regulation specifies that only if the top 10 most played French songs on a station account for less than 50 percent of the songs played are they counted towards the quota. France's Broadcasting Authority, Conseil supérieur de l'audiovisuel, oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows. While they are in theatrical release, feature films may not be shown or advertised on television. France also maintains a four-month waiting period between the date a movie exits the cinema and the date when it can be shown on video-on-demand.

Before the end of 2019, the MOC intends to introduce new legislation transposing into French law the revised AVMSD. Despite a change in leadership in October at the MOC, the government intends to keep the 60 percent EU quota – of which 40 percent must include original French language content – and extend the EU content quotas to providers of on-demand services and video sharing platforms. The MOC also hopes to curtail the waiting period between the release of a movie in movie theaters and its availability on television, pay-TV, VOD and SVOD services.

Italy: The Italian Broadcasting Law, which implements EU regulations, provides that the majority of television programming time (excluding sports, news, game shows, and advertisements) be EU-origin content. In 2017, Italy adopted new legislation raising the quota for EU content to 53 percent in 2019, 56 percent in 2020, and 60 percent in 2021. The law also sets mandatory quotas for Italian language content aired between 6:00 p.m. and 11:00 p.m.

Poland: Television broadcasters must devote at least 33 percent of their broadcasting time each quarter to programming originally produced in the Polish language, except for information services, advertisements, telesales, sports broadcasts, and television quiz shows. Radio broadcasters are obliged to dedicate 33 percent of their broadcasting time each month and 60 percent of broadcasting time between 5:00 a.m. and midnight to Polish language programming. Television broadcasters must dedicate at least 50 percent of their broadcasting time quarterly to programs of EU origin, except for information services, advertisements, telesales, sports broadcasts, and television quiz shows. Television broadcasters must devote at least 10 percent of their broadcasting time to programs by EU independent producers, and compliance is reviewed every three months. As of July 5, 2017, Poland implemented an EU directive that allows concession-holders to apply for an exception allowing for 25 percent Polish and 40 percent EU content in some specific cases. On-demand audiovisual media services providers also must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content.

Portugal: Television broadcasters must dedicate at least 50 percent of air time to programming originally produced in the Portuguese language, with at least half of this produced in Portugal. Music radio broadcasters must dedicate between 25 percent to 40 percent of programming time to music produced in the Portuguese language or in traditional Portuguese genres, with at least 60 percent of this produced by citizens of the EU.

Slovakia: Since January 2017, private radio stations have been required to allocate at least 25 percent of airtime to Slovak music, and state-run radio at least 35 percent. In addition, at least one-fifth of the Slovak songs must have been recorded in the past five years.

Spain: For every three days that a film from a non-EU country is screened, one EU film must be shown. This ratio is reduced to four days to one if the cinema screens a film in an official language of Spain other than Spanish and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services annually must invest five percent of their revenues in the production of EU and Spanish films and audiovisual programs.

In 2010, the Autonomous Community of Catalonia passed the Catalan Cinema Law, legislation that requires distributors to include the regional Catalan language in any print of any movie released in Catalonia that had been dubbed or subtitled in Spanish (but not any film distributed in Spanish). The law also requires exhibitors to exhibit such movies dubbed in Catalan on 50 percent of the screens on which they are showing. In 2012, the Commission ruled that the law discriminated against European films and must be amended. Additionally, the Spanish constitutional court ruled in July 2017 that the law was disproportionate, and reduced the requirements of movies to be dubbed in Catalan to 25 percent. To date, the law has not been amended, nor has the issue been brought before the CJEU. Although the Catalan Cinema Law technically came into force in January 2011, the Catalan regional government has not yet approved its implementation, giving the law no effect. In the absence of the regulation, in 2012 the regional government and major movie studios agreed to dub 20 films in Catalan annually, in addition to 20 independent films, with dubbing financed by the regional government.

In 2015, the Spanish government awarded six digital terrestrial television broadcasting licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. Additionally, U.S. companies have complained about lack of reciprocity in their efforts to purchase portions of Spanish broadcasting companies. The United States continues to engage on these issues with the Spanish government.

Video-on-demand services in Spain must reserve 30 percent of their catalogs for European works (half of these in an official language of Spain) and contribute 5 percent of their turnover to the funding of audiovisual content.

Legal Services

Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Greece, Hungary, Latvia, Lithuania, Malta, and Slovakia require EU or EEA nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Member State Measures

Bulgaria: The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the partners has to be registered both in Bulgaria and in another Member State if the local partnership is to use an internationally recognized name.

Czech Republic: Unlike EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (*i.e.*, operate directly through their home legal entities). However, attorneys from U.S. law firms admitted as foreign lawyers may establish a business entity to practice law under the U.S. company name.

Hungary: U.S. lawyers may provide legal services only under a “cooperation agreement” with a Hungarian law firm and may only provide information to their clients on U.S. or international law.

Accounting and Auditing Services

The Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. This interpretation has hampered movement of experienced professionals and inhibited Member States from participating in the growing movement towards mutual recognition in this profession. The United States will continue to advocate for Member States to take into account experience of U.S. certified public accountants acquired outside of the EU.

Member State Measures

Hungary: Foreign investors must have a Hungarian partner in order to establish accounting companies.

Retailing Services

Member State Measures

EU nationality is required for operation of a pharmacy in Austria, France, Germany, Greece, and Hungary.

Hungary: In 2018, the Hungarian government eliminated a 2015 law that required food retail chains with annual revenue of $55 million or greater to shut down if they incur losses for two consecutive years, after the Commission started infringement proceedings against Hungary over the legislation. The same year, however, the government passed a new law that requires mandatory tax audits for any company with total revenue more than $220 million that have not reported an after-tax profit for two consecutive years. A 2018 modification of the law on construction permits requires investors to obtain a construction permit before converting any building into a retail shop exceeding 400 square meters or to remodel an existing retail unit. Many industry representatives are concerned that these new laws may be used to unfairly favor domestic retailers in the face of competition from large foreign retail firms.

Romania: In July 2016, Romania passed a law requiring large supermarkets to source from the local supply chain at least 51 percent of the total volume of their merchandise in meat, eggs, fruits, vegetables, honey, dairy products, and baked goods. The law vaguely defines the local supply chain and is intended to favor Romanian products. This law applies to high-volume supermarkets with more than €2 million ($2.3 million) in annual sales, affecting all major chains. The law also bans food retailers from charging suppliers for any services, including on-site marketing services, thereby preventing producers from influencing how stores market or display their products and injecting greater unpredictability into the business environment. The government has not yet implemented the 51 percent provision by passing the required secondary legislation, although it announced its intention to do so even after the Commission notified Romania of possible infringement proceedings on February 15, 2017. The Romanian parliament has yet to finalize the implementing legislation.

EU Enlargement

After each of the three most recent rounds of EU enlargement, the EU has submitted notifications to WTO Members concerning the modification of existing commitments under the GATS by the newly acceded EU Member States. In accordance with GATS Article XXI, the EU was required to enter into negotiations with any other WTO Member that indicated that it was affected by the modification of existing commitments. In connection with the largest of these rounds of enlargement (the expansion to 25 members in 2004), the United States and the EU agreed to a compensation package on August 7, 2006. To date, however, the Commission has failed to secure the approval of all Member States, which is necessary to implement the agreement.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

As of September 2018, the Commission had undertaken 30 legislative initiatives as part of its Digital Single Market (DSM) strategy, intended to eliminate barriers to digital trade within the EU. Of these proposals, 19 have successfully completed the trilogue process with the European Parliament and European Council. As the EU continues its work on the DSM, the United States encourages the Commission to ensure predictable and consistent market conditions, which will support growth in transatlantic trade and investment. The effects of the proposed EU rules on innovative services and digital trade will be of particular interest to the United States. The well-intentioned goal of creating a harmonized single market for digital trade in the EU, if implemented through flawed regulation, could seriously undermine transatlantic trade and investment, stifle innovation, and undermine the Commission's own efforts to promote a more robust, EU-wide digital economy.

Data Localization

The free flow of data has been critical to the continued growth of digital trade. The United States monitors and works to eliminate data localization requirements, which are unfortunately a growing global trend. The GDPR restricts the transfer of the personal data of EU citizens outside of the EU, except to specific countries that the EU has determined provide adequate data protection under EU law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules.

The United States remains concerned, that the implementation and administration of the GDPR create disproportionate barriers to trade, not only for the United States, but for all countries outside of the EU. Although the United States has received a determination of partial adequacy from the EU (for information on the European Union-United States Privacy Shield Framework, see below), there are many other countries, including India, Japan, and Korea, that have expressed interest in obtaining an adequacy determination to facilitate the exchange of data with the EU. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for support to the functionality embedded in trade in intelligent goods (*i.e.*, smart devices). The EU has so far found only a handful of countries to provide adequate data protection under EU law, which means that suppliers in the large majority of EU trading partners must rely on other arrangements or criteria to transfer data with suppliers in the EU. Moreover, legal challenges in the EU continue to create uncertainty around the transfer of data for U.S. and other foreign companies. As of the end of 2018, the validity of the EU-U.S. Privacy Shield Framework was the subject of a case before the EU's General Court, and the use of standard contract clauses was under judicial review in Ireland with the issue of its referral to the CJEU on appeal to the Irish Supreme Court.

European Union-United States Privacy Shield Framework

The European Union -United States Privacy Shield Framework (Framework) provides U.S.-based organizations a mechanism to comply with EU data protection requirements when transferring personal data from the EU to the United States in support of transatlantic commerce. As of November 2018, over 4,000 U.S. companies had completed their certification to the Framework. In October 2018, the second annual review of the Framework was held in Brussels, Belgium. U.S. participants included officials from the Department of Commerce, the Federal Trade Commission, the Department of State, and other federal agencies. The Commission's Directorate General for Justice led the EU delegation, with active participation from a select group of Member State Data Protection Authorities. U.S. Secretary of Commerce Wilbur Ross and EU Commissioner Věra Jourová issued a joint press statement expressing their shared interest in the success of the Framework and a commitment to continue collaboration. The Commission's report on the second annual review concluded that the Framework continues to provide an adequate level of privacy protection under EU law and that U.S.-EU collaboration over the past year has further enhanced the successful functioning of the Framework.

Regulation on the free flow of non-personal data

In October 2018, the EU adopted the Commission's proposal for a regulation on a framework for the free flow of non-personal data within the EU. The regulation focuses on non-personal data (*i.e.*, data that is outside the broad scope of the GDPR) and prohibits data localization requirements within the EU, unless they are justified on the grounds of public security. The proposal also includes provisions concerning data portability. The EU and United States share the goal of ensuring that there is a free flow of data in the transatlantic and global economy. In fact, the United States continues to strongly encourage the EU to examine barriers not only within the EU, but also between the EU and the rest of the world.

General Data Protection Regulation

The GDPR took effect on May 25, 2018, replacing the 1995 Data Protection Directive (DPD). Under the GDPR, the Commission and Member State DPAs can impose fines of up to four percent of annual global revenue on firms that breach the new data protection rules. For multinational corporations, such fines could amount to billions of dollars. The GDPR creates joint liability for controllers (the company that controls the processing of personal data) and processors (generally contractors hired by the controller to provide services using the data). The regulation requires companies to have a data protection officer or a representative present in the EU. It adds new requirements for accountability, data governance, and notification of a data breach. In addition, the GDPR provides expanded rights to EU data subjects, including data portability and more stringent consent requirements. The GDPR also codifies the 2014 decision of the CJEU that imposed a right for EU citizens to demand that search engines remove information that is inaccurate, inadequate, irrelevant, or excessive for the purposes of data processing ("right to be forgotten"). The GDPR also created a new European Data Protection Board. The Board is tasked with minimizing disparities in implementation and enforcement between individual Member State DPAs, and it will be entrusted to resolve disputes between DPAs.

Because of the EU's assertion of extra-territorial jurisdiction for the GDPR, as well as the GDPR's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in the implementation and any enforcement of the GDPR. It is already clear that the impacts of the GDPR can have an extensive effect beyond the borders of the EU. For example, the WHOIS registry of the contact information for website domain names is a critical tool that has been used for cybersecurity and intellectual property infringement purposes by companies and security researchers as well as by law enforcement officials. Implementation of the GDPR so far has led to curtailed access to WHOIS registration information, having a significant effect on IP enforcement efforts and the ability of legitimate rights holders to take action against infringers and bad actors, including those responsible for malware, botnet attacks, and phishing schemes. The United States continues to strongly encourage the EU to work closely with companies and organizations, both in the EU and those outside the EU, that are impacted by the GDPR to resolve implementation and enforcement issues in a reasonable and consistent manner.

France. On May 21, 2015, the French DPA (CNIL) ordered one U.S. search supplier to remove information under a "right to be forgotten" matter from all its domains on a worldwide basis. On March 10, 2016, CNIL fined the U.S. search supplier for its failure to apply the order outside of the EU. The CNIL order was appealed to the Council of State, France's highest administrative court, and the State Council referred the matter to the CJEU, noting the scope of the right to be de-listed posed several serious difficulties with respect to the interpretation of EU law.

On January 10, 2018, the Advocate General for the CJEU filed an advisory opinion on the matter that recommends to the CJEU that it determine that this EU law does not have effect beyond the borders of the EU. The Advocate General noted that if worldwide removal of information were permitted under this EU law, persons in third states would be prevented from accessing information and, in turn, third states may prevent persons in the EU from accessing information. Although the Advocate General's advisory opinion is reassuring, the Office of the U.S. Trade Representative remains concerned that if CNIL's order is upheld, France and presumably other Member State DPAs would maintain that they have the authority to restrict what non-EU businesses and individuals would be able to access on the Internet. This would set a troublesome precedent, empowering governments to apply their domestic law extraterritorially on the Internet, and would create significant market uncertainty for businesses worldwide.

Interactive Computer Services

Cybersecurity certification

Published in September 2017, the Commission's Cybersecurity Act proposal would give new powers to the European Union Agency for Network and Information Security (ENISA) to coordinate Member States in the event of a large cyber security attack. It also proposes a voluntary EU-wide certification and labeling scheme for Internet of Things products and services. Although the Commission has insisted the scheme would remain voluntary, some observers are concerned that the result could be a *de facto* mandatory approach to certification and labeling. Negotiations are expected to conclude in 2019.

Platform Regulation

In April 2018, the Commission proposed a new regulation on platform-to-business services and online search services. The proposal would require online intermediaries to provide redress mechanisms and meet aggressive transparency obligations concerning delisting, ranking differentiated treatment, and access to data. Among other obligations, covered service providers would have to disclose "criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms" associated with rankings or search results. U.S. companies have raised concerns that these requirements could create market access barriers and potentially compromise trade secrets that are critical to their provision of such services. The Council and Parliament agreed to their respective positions in 2018 and as of March 2019 the proposal was under discussion in trilogue discussions.

Proposed Regulation on Preventing the Dissemination of Terrorist Content Online

In September 2018, the Commission published a proposal for regulating removal of online terrorist content from Internet platforms. The new rules would impose a one-hour deadline for platforms to remove content following an order from national authorities and require platforms to take proactive measures to ensure that they are not misused for the dissemination of terrorist content online. Although the goal of removing and minimizing terrorist content online is legitimate, the one hour deadline coupled with proposed penalties of up to four percent of a company's global revenues would create significant uncertainty for many U.S. services suppliers participating in EU markets. The file is under discussion at the Parliament.

France. In September 2018, France announced plans to propose a law in 2019 that would require platforms to remove "hate speech" within one day and "terrorist content" within one hour with potential fines for noncompliance as high as €37 million ($42 million).

Germany. In January 2018, the Improve the Enforcement of Rights in Social Networks Act (NetzDG) went into effect in Germany. The NetzDG law mandates the removal of "obviously illegal" content with 24 hours and other illegal content with 7 days and provides for fines as high as €50 million ($57 million) for non-compliance.

Aggregation Services

Over the past several years, certain Member States have adopted or considered copyright-related measures requiring remuneration or authorization for certain content associated with online news aggregation services. Specifically, the measures would require news aggregators, which provide short excerpts ("snippets") of text from other news sources and/or images, to either remunerate those other sources or obtain authorization for their use. One Member State has also introduced a similar measure with respect to digital images.

Additionally, as of March 2019 a new neighboring right for press publishers was part of the draft Directive on Copyright. The Commission recommends extending the reproduction right and making available right to press publishers with respect to the digital use of their press publications. Although certain U.S. and EU stakeholders, particularly from the publishing industry, have supported this proposal, online news aggregators, including but not limited to U.S. service suppliers, have raised concerns regarding the potential impact of this proposed Directive, in part because of their experiences with the German and Spanish laws described below.

These measures and proposals are intended to address publishers' and visual artists' challenges in adapting to the digital marketplace, but also have an effect on suppliers of news aggregation services. U.S. stakeholders have expressed a range of competing views on these issues. Measures that disproportionately affect only one group of foreign-based service suppliers in the digital ecosystem may exacerbate those challenges to the detriment of all participants in the marketplace.

Spain: A 2014 amendment to the Spanish intellectual property law (Article 32.2), which took effect in 2016, imposed upon commercial news aggregators a mandatory compulsory license and compensation regime for the use of text fragments of news publications. News aggregators are required to remunerate publishers via a rights management organization for the use of "non-significant fragments" of their news publications. The remuneration rate is negotiable via the collective management organization, but there are no means by which a covered news publisher can waive this right or independently license directly with a news aggregator should it so desire (*e.g.*, if the news publisher wishes to allow readers to find and access such publications through such aggregators at a different rate). Faced with this measure, at least one leading U.S. supplier suspended its news aggregation service in the Spanish market.

Germany: A 2013 German law (Leistungsschutzrecht für Presseverleger) creates a neighboring right for press publishers that permits news publishers and news aggregators to negotiate terms of individual licenses (including the option to opt out of requirement payment under the law) for the making available of articles and illustrations (or parts thereof) from news publications. It does not apply to "short extracts" of news publications. During the implementation of the German law, at least one leading U.S. supplier obtained a royalty-free license from a German collecting society for the display of short extracts of news publications. There are continuing stakeholder concerns regarding the legal uncertainty created by the law and its effect on innovative businesses in Germany.

France: In 2017, the Freedom of Creation Act, a set of measures designed to bolster suppliers of cultural products through subsidies and other governmental interventions went into effect. The so-called "thumbnail amendment" in the Freedom of Creation Act, found in Article 30, requires "automated image referencing services" to remunerate French rights collecting societies for the right to "reproduce and make available" an image. Individual artists or photographers cannot opt out of this licensing regime. France's main copyright collecting societies have pursued negotiations for the payment of royalties for the reproduction and making available of photographs and images in thumbnails with foreign search engines and social networks. There are continuing stakeholder concerns regarding the legal uncertainty created by the law and its effect on innovative businesses in France.

Barriers to New and Innovative Services

New services often add to innovation, competition, and consumer welfare in existing or new markets. Application of existing regulation designed for different services to such new services without due consideration of the characteristics of the new service at issue and the technical feasibility of imposing the requirements may create unnecessary barriers to trade and investment.

Poland: Among the regulations Poland applies to app-based transportation services is a requirement that the driver and rider must sign a written contract for each trip, which raises concerns that app-based transportation services are unfairly prohibited from providing service through their preferred means (*i.e.*, electronic application).

Other Issues

Market Surveillance and Mutual Recognition: "The Goods Package"

In December 2017, the Commission initiated a two-part legislative proposal (the Goods Package) aimed at improving product safety across the EU: 1) a draft regulation on compliance and enforcement (market surveillance); and 2) a draft regulation on mutual recognition for the EU Single Market. The Commission notified the package to the WTO in February 2018. The draft regulation on compliance and enforcement was in trilogue discussions as of March 2019 with final adoption expected in spring 2019.

The U.S. Government and stakeholders have expressed concern about a number of elements in the proposed Goods Package. A provision contained in Article 4 of the proposed regulation on compliance and enforcement stipulates that a product may be made available on the EU market only if the manufacturer appoints an economic operator based in the EU, who will be responsible for maintaining applicable compliance documentation and cooperating with market surveillance authorities to furnish that information, as necessary. The U.S. Government and stakeholders have raised concerns that Article 4 could disproportionately disadvantage small and medium-sized companies selling to the EU through e-commerce platforms. In addition, it may be possible that fulfillment houses and logistic providers become liable for compliance on behalf of companies selling products through them. The U.S. Government will continue to raise concerns with the EU.

Digital Services Tax

On March 21, 2018, the Commission proposed a directive to levy an interim tax on digital services to the following types of services: 1) placing advertising on a digital interface, where the advertising appears on a user's device in the EU; 2) making available a multi-sided digital interface that allows users to find and interact with other users, and which may facilitate the provision of underlying supplies of goods or services directly between users, where a user is located or based in the EU; and 3) the transmission (*e.g.*, sale) of data collected about users and generated from users' activities on digital interfaces, where the user is in the EU. The proposed tax would apply to companies with annual worldwide revenues exceeding €750 million ($849 million) and revenues within the EU exceeding €50 million ($57 million). On March 12, 2019, with several EU Member States firm in their opposition to the Commission proposal, EU finance ministers decided to abandon the effort to reach agreement on an EU-wide digital services tax.

The United States opposes proposals by any country to single out digital companies. Such proposals are based on an unprincipled and unsupported distinction between digital companies and non-digital companies. In addition, U.S. companies have expressed concerns that the specific services included in the proposal along with the thresholds for global and EU-wide revenues appear to target almost exclusively U.S. companies and so would have a discriminatory effect on U.S. suppliers participating in EU markets.

France: On March 6, 2019, the Council of Ministers adopted a draft digital services tax bill, which will be presented to parliament in April. A three percent tax would be levied on revenue generated from sales of targeted digital advertising, online marketplaces, and the sale of private data for purposes of targeted advertising. The tax would affect global annual revenues over €750 million ($849 million) and revenues over €25 million ($28 million) in France.

Italy: The Italian Budget Law (Law 145/2018) was published on January 1, 2019, and introduced a tax on digital services. The Italian Finance Ministry is expected to issue an implementing decree before April 30, 2019. The tax would then likely apply as of June 2019. The Italian tax is based on the EU proposal and imposes a three percent tax on revenues from online advertising, online marketplace services, and services transmitting user data.

Spain: On January 25, 2019, Spain published a revised version of its digital services tax bill, which will be sent to its Parliament for consideration. The Spanish bill is based on the EU proposal and would impose a three percent tax on revenues from online advertising, online marketplace services, and services transmitting user data. The measure would use the same global revenue threshold for applicability as the EU proposal but would replace the EU-wide revenue number with a Spain-specific revenue threshold of €3 million ($3.4 million).

United Kingdom: In October 2018, the United Kingdom announced that it would introduce a digital services tax. The tax is described as placing the burden of the new tax on “established tech giants” and would be proposed to take effect in April 2020. The UK tax would impose a two percent tax on the revenues from digital services including search engines, social media platforms, and online marketplaces. The UK makes clear it is not a generalized tax but will only apply to the specific business models laid out in its proposal. The UK tax would only apply to businesses that generate revenues of at least £500 million ($664 million) globally from the covered services. The United Kingdom also exempts the first £25 million ($33 million) revenues in the United Kingdom from the tax. The UK proposal also promises to devise at a later time a “safe harbor” that will adjust the tax for those businesses that have very low profit margins.

Geo-blocking

On December 3, 2018, a regulation barring unjustified “geo-blocking” went into effect in the EU. The Commission defines geo-blocking as a market segmentation practice whereby traders treat their customers differently, based on the Member State in which they reside or are located, by applying different contract terms, directing them to different websites, or offering different prices, usually based on the customer’s Internet Protocol address, physical address, or nationality, or on the issuer of the customer’s credit or debit card. The regulation sets forth disclosure requirements for businesses that engage in geo-blocking or re-routing to justify these practices. U.S. businesses that rely on market segmentation or exclusive distributor agreements as part of their overall strategy have expressed concerns that the pricing transparency requirements will make it possible for EU consumers to purchase goods and services from any Member State, potentially interfering with the freedom to contract. For example, a Swedish consumer would be able to price compare across the entire EU and bypass the exclusive Swedish distributor of a product, potentially obtaining the product at a lower price from a distributor in another Member State market.

INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign investors, however, are largely still the purview of individual Member States. As discussed below, the policies and practices of the EU and its Member States can have a significant impact on U.S. investment.

Member State Measures

Bulgaria: The Offshore Company Act lists 28 activities banned for business by companies registered in offshore jurisdictions with more than 10 percent offshore participation, including government procurement, natural resource exploitation, national park management, banking, and insurance. The law, however, allows those companies to do business if the physical owners of the parent company are Bulgarian citizens and known to the public, if the parent company's stock is publicly traded, or if the parent company is registered in a jurisdiction with which Bulgaria enjoys a treaty for the avoidance of double taxation (such as the United States).

While Bulgaria generally affords national treatment to foreign investors, there are reports of discrimination against U.S. investors by government officials. Investors more often cite general problems with corruption, rule of law, frequently changing legislation, and weak law enforcement. Transparency International's Corruption Perception Index for 2017 ranked Bulgaria 71st out of 180 countries surveyed – the lowest-ranked EU member state. As of early 2018, the government has been openly discussing the possibility of abrogating its long-term contracts with two major U.S. investors, citing the need to adhere to EU regulatory policies. In another case, a U.S. company has been facing major regulatory, and possibly political, obstacles in its efforts to compete with an entrenched foreign incumbent in the energy market.

The natural gas market in Bulgaria remains largely closed to competition, with gas supplied almost exclusively by Russia's Gazprom under a long-term contract and domestic distribution dominated by Bulgaria's state-owned entities. These conditions have led to antitrust actions by the Commission against the relevant state-owned companies, accusing them of conspiring to restrict would-be competitors from accessing key gas infrastructure in Bulgaria. With respect to the supply of gas into Bulgaria from foreign markets, the introduction of entry-exit tariffs on October 1, 2017, has made commercial gas trade economically unviable, including for U.S.-sourced liquefied natural gas. The higher tariff does not apply to Russia's Gazprom, raising concerns about discrimination.

Croatia: U.S. companies doing business in Croatia complain that their operations are negatively affected by inefficient and unpredictable judicial processes. Disputes between U.S. investors and Croatian partners or government authorities can take multiple years to resolve. U.S. investors have reported that local government officials who take action against their assets in violation of court orders are rarely, if ever, penalized. They similarly complain that foreign investors are prejudiced by local corruption, alleging judicial bias in favor of local parties who have relationships with judges and judicial employees. While investors of all nationalities (including Croatians) cite judicial inefficiency and corruption as common obstacles to doing business in Croatia, the perception that non-local litigants do not enjoy impartial access to the courts creates a further barrier to investment.

Cyprus: Cypriot law imposes restrictions on the foreign ownership of real property and construction-related businesses. Non-EU residents may purchase no more than two independent housing units (apartments or houses), or one housing unit and a small shop or office. Exceptions are available for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Separately, only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company. Non-EU residents or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

Non-EU entities are prohibited from investing in the production, transfer, and provision of electrical energy. Individual non-EU investors may not own more than 5 percent of a local television or radio station, and total non-EU ownership of a local TV or radio station is restricted to a maximum of 25 percent. Non-EU entities cannot invest in private tertiary education institutions. The provision of healthcare services on Cyprus is also subject to certain restrictions, applying equally to all non-residents. Finally, the Central Bank of Cyprus's prior approval is necessary before any individual person or entity, whether Cypriot or foreign, can acquire more than 9.99 percent of a bank incorporated in Cyprus.

Greece: Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

Italy: Some U.S. companies claim to have been targeted adversely by the Italian Revenue Authority by virtue of the fact that they engage in international operations. Tax rules in Italy change frequently and are interpreted inconsistently. U.S. companies report long delays in receiving VAT refunds to which they are legally entitled. Tax disputes are resolved slowly, and initial findings are frequently reversed, which reduces certainty and increases compliance costs. U.S. oil and gas companies have also faced lengthy delays in obtaining necessary permits from the Italian government for exploration and drilling.

Italy is generally obliged to provide national treatment to U.S. investors established in Italy or in another Member State. Exceptions include access to government subsidies for the film industry (limited to Member States); capital requirements for banks domiciled in non-EU countries; and restrictions on non-EU-based airlines operating domestic routes. Italy also has investment restrictions in the shipping sector.

Latvia: The judicial system in Latvia can present significant challenges to investors. Insolvency proceedings continue to present serious problems: Cases often take several years to resolve, and there have been reports of large-scale abuse by both insolvency administrators and bad-faith creditors who have manipulated the proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice serious concerns about the duration of civil cases, while the nature and opacity of judicial rulings have led some investors to question the fairness and impartiality of some judges.

In 2017, Latvia enacted amendments to its Law on Land Privatisation in Rural Areas that, among other things, prohibit foreigners who are not permanent residents in Latvia from purchasing agricultural land. These amendments also require that any person wishing to purchase agricultural land possess a working knowledge of the Latvian language and be able to present in Latvian their plans for the future use of the land.

Poland: With respect to financial institutions, Poland in January 2016 imposed a 0.44 percent tax on the assets of banks, consumer lending companies, and insurances companies. International ratings agencies expressed concern that the tax would reduce banks' ability to absorb shocks, and hurt credit growth. These concerns have not so far been borne out. Laws passed in 2016 regulating wind farm construction caused sharp valuation drops in wind energy sector assets, more than half of which were owned by foreign investors, and undercut new investments in wind energy infrastructure. The Polish tax system underwent many changes in 2017 and 2018, with the aim of increasing budget revenues and compliance. More aggressive tax auditing and collection in some cases has led to delays in re-approval of transfer pricing arrangements, changes in categorization of goods for purposes of using bonded warehouses, possible incorrect collection of excise tax, and unclear guidance on application of the double taxation treaty for stock options. Imposition of an exit tax on both individual and corporate assets can also affect foreign investors, although enabling regulations have not yet been issued.

Pursuant to the Broadcasting Law, a television broadcasting company may only receive a license if the voting share of foreign owners does not exceed 49 percent and if the majority of the members of the management and supervisory boards are Polish citizens and hold permanent residence in Poland. In the insurance sector, at least two management board members, including the chair, must speak Polish.

The current government has expressed a desire to increase the percentage of domestic ownership in some industries such as banking and retail, which have large holdings by foreign companies, and has employed sectoral taxes to advance this aim. Two new laws in the healthcare sector have been alleged to discriminate against foreign firms, namely hospital reform favoring large public hospitals for public reimbursement contracts and a law introduced in 2017 aimed at restricting ownership of pharmacies to licensed pharmacists in an effort to force out pharmacy chains.

Romania: Uncertainty and a lack of predictability in legal, fiscal, and regulatory systems pose a continuing impediment to foreign investment in Romania. According to the International Monetary Fund, there were 41 changes in the tax code in 2016-2017. Changing political priorities and a lack of capacity have led to persistent underinvestment in infrastructure, which is well below EU standards. Many companies report experiencing long delays in receiving VAT refunds to which they are legally entitled, with deadlines stipulated by law for the processing and payment of refunds often not being respected.

Slovenia: Weak corporate governance and a lack of transparency, particularly with respect to state-owned enterprises, continue to present significant challenges for investors in Slovenia. Potential U.S. investors have reported that opaque decision-making processes in the government’s privatization program have discouraged investment.

Slovenia maintains certain limits on foreign ownership or control. There are limits on banking and investment services, private pensions, insurance services, asset management services, and settlement, clearing, custodial, and depository services provided in Slovenia by companies headquartered in non-EU countries. Companies in these sectors from non-EU countries can operate freely only through an affiliate with a license granted by an appropriate Slovenian or EU institution. Aircraft registration is only possible for aircraft owned by Slovenian or EU nationals or companies controlled by such entities. The law forbids majority ownership by non-EU residents of a Slovenian-flagged maritime vessel unless the operator is a Slovenian or other EU national.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $211 million in 2018, a 92.9 percent increase ($102 million) over 2017. U.S. goods exports to Ghana were $793 million, down 7.8 percent ($67 million) from the previous year. Corresponding U.S. imports from Ghana were $582 million, down 22.5 percent. Ghana was the United States' 84th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Ghana (stock) was $1.7 billion in 2017 (latest data available), a 14.3 percent decrease from 2016.

TRADE AGREEMENTS

Ghana is a member of the Economic Community of West African States (ECOWAS). Ghana has ratified both the European Union-West Africa Economic Partnership Agreement (EPA) and a bilateral EPA with the EU. The bilateral EPA has entered into force; however, the EU-West Africa EPA has not. Ghana ratified the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

The Economic Community of West African States (ECOWAS) Common External Tariff (CET), which was formally adopted by ECOWAS in 2013, entered into force in Ghana on February 1, 2016. The CET has five tariff bands: zero percent duty on essential social goods (*e.g.*, medicine); five percent duty on essential commodities, raw materials, and capital goods; 10 percent duty on intermediate goods; 20 percent duty on consumer goods; and 35 percent duty on certain goods for which the Ghanaian government elected to afford greater protection, such as poultry and rice.

Ghana’s Most Favored Nation (MFN) applied tariff rate averaged 15.9 percent for agricultural products and 11.4 percent for non-agricultural products in 2017 (latest data available). Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent, more than six times the average level of its MFN applied rates on agricultural goods. Almost all of Ghana’s tariffs on industrial goods are unbound at the WTO. As such, Ghana could raise tariffs on those products to any rate at any time, which creates uncertainty for importers and exporters.

Taxes

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana imposes a 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries and a levy of 0.4 percent of the free on board (FOB) value of goods (including VAT) for the use of the Ghana Community Network (GCNet), an automated clearing system.

Under the Ghana Export-Import Bank Act, which came into effect on January 3, 2017, Ghana imposes a 0.75 percent levy on all non-petroleum products imported in commercial quantities. This levy replaced the Export Development and Agricultural Investment Fund levy of 0.5 percent. Ghana charges a one percent fee for the Customs Classification and Valuation Report and also applies a one percent processing fee on all duty-free imports. Effective through the end of 2019, Ghana also imposes a special import levy of two percent on all imports, except for machinery and equipment listed under chapters 84 and 85 of the Harmonized Tariff System and some petroleum products and fertilizers. Finally, Ghana imposes a 0.2 percent levy on imports from outside African Union (AU) member states to fund its contribution to the AU.

Ghana applies an examination fee of one percent to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the cost-insurance-freight (CIF) value. The Customs Division of the Ghana Revenue Authority uses a price list to determine the value of imported used vehicles for tax purposes. This system is not transparent; the price list used for valuation is not publicly available.

Nontariff Barriers

Import Restrictions

Since 2014, Ghana has limited the quantity of import permits issued for poultry and poultry products, although the current government no longer enforces a domestic purchase requirement as a condition for import. In 2018, the State Minister of Agriculture halted the issuance and renewal of poultry import permits for local traders in an effort to improve competitiveness and productivity in the domestic sector. The Ghanaian government claims that traders import three to four times Ghana's annual consumption demand, but has not provided supporting data.

Ghana has banned the importation of tilapia since 2014 in order to protect local fishermen.

Ghana requires certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods.

Customs Barriers and Trade Facilitation

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk-management approaches, such as the Pre-Arrival Assessment Reporting System. However, the majority of imports are still subject to inspection on arrival, causing delays and increased costs. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to product deterioration and result in significant losses for importers of perishable goods.

Additionally, Ghana's ports suffer from congested roads and lack a functioning rail system to transport freight, creating long waits for ships to berth at cargo terminals and for containers to be transported out of the ports. Ghana Ports and Harbor Authority (GPHA) is working to modernize both the Ports of Tema and Takoradi. In November 2016, Ghana launched a $1.5 billion public-private partnership between GPHA and Meridian Port Services, a partnership representing interests from the Netherlands and France, to quadruple the capacity of the Tema Port. This port expansion project is expected to be completed in 2019.

Ghana has launched several initiatives over the past couple of years to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times. The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies, which many believed were the source of the long clearance delays. However, the one percent fee associated with the inspections is still collected.

In July 2018, the GRA launched the Cargo Tracking Notes (CTN) system, an online platform meant to confirm import authenticity, which requires imports to have a CTN number to clear Customs. Initially, CTN required U.S. exporters to provide Electronic Export Information (EEI) to obtain a CTN number. However, because EEI may not be shared with foreign governments or foreign entities, GRA subsequently agreed to accept an alternative document from U.S. exporters that does not contain prohibited information, the Export Facilitation Data Form developed by the U.S. Department of Commerce.

In January 2017, Ghana ratified the WTO Trade Facilitation Agreement (TFA). As a developing country Member of the WTO, Ghana availed itself of the implementation flexibilities in Section II of the TFA. However, Ghana has failed to notify its Category B commitments with indicative dates, which were due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017, and its Category B definitive dates, which were due February 28, 2018. Ghana also has failed to designate the over 90 percent of its outstanding commitments in Section I of the Agreement. Ghana has yet to provide the relevant information regarding its indicative Category B or C notifications.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Ghana issues its own standards for most products under the auspices of the Ghana Standards Authority (GSA). The GSA has 2,485 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. The Ghanaian Food and Drugs Authority is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Some imports are classified as “high risk goods” (HRG) that must be inspected by GSA officials at the port to ensure they meet Ghanaian standards. The GSA classifies these HRGs into 20 broad groups, including food products, electrical appliances, and used goods. U.S. stakeholders have found this classification system vague and confusing. For example, the category of “alcoholic and nonalcoholic products” could include anything from beverages to pharmaceuticals to industrial products. According to GSA officials, these imports are classified as high risk because they pose “potential hazards,” although that phrase remains undefined in law or regulation.

Importers of HRGs must register and obtain approval from GSA prior to importing any of these goods. In particular, as part of this approval, the importer must submit to GSA a sample of the good, accompanied by a certificate of analysis (COA) or a certificate of conformance (COC) from an accredited laboratory in the country of export. Frequently, GSA officials will conduct a physical examination of the goods and check labeling and marking requirements to ensure that they are released within 48 hours. Currently, the fee for registering the first three HRGs is GH₵100 (about $20) and GH₵50 (about $10) for each additional product, valid for one year and subject to renewal.

Any HRG presented to enter Ghana without a COC or COA from an accredited laboratory is detained and subjected to testing by the GSA. If the product is detained, the importer is required to pay the testing fee based on the number of products and the parameters tested.

The GSA requires that all food products carry expiration and shelf life dates. Expiration dates must extend at least to half the projected shelf life at the time the product reaches Ghana. Goods that do not have half of their shelf life remaining are seized at the port of entry and destroyed. The United States has raised this latter requirement with Ghana in recent years and questioned the requirement’s consistency with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

Sanitary and Phytosanitary Barriers

To address human health risks, Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton. Imported turkeys must have their oil glands removed. Ghana also restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers.

GOVERNMENT PROCUREMENT

Some large public procurements are conducted with open tendering and allow the participation of nondomestic firms. However, single source procurements are common on many government contracts. A guideline that applies to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the public procurement law, companies report that locally funded contracts lack full transparency. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption in the tender process are fairly common.

Ghana is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2016, Ghana launched its national intellectual property (IP) rights policy and strategy in an effort to create an enabling environment for innovation and investment. Government officials also periodically conduct raids on physical markets for counterfeit and pirated works, and inspect import shipments. However, concerns remain that IP enforcement activity remains weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts.

SERVICES BARRIERS

Telecommunications Services

Following legislation enacted in 2009, Ghana requires a minimum rate of $0.19 per minute for terminating international calls into Ghana, which is significantly higher than the average rate prior to 2009. This rate increase correlated with a decrease in call volume from the United States to Ghana and a decrease in U.S. termination payments to carriers in Ghana.

Financial Services

The National Insurance Commission (NIC) imposes nationality requirements with respect to the board and senior management of locally incorporated insurance and reinsurance companies. At least two board members must be Ghanaians, and either the Chairman of the board of directors or the Chief Executive Officer (CEO) must be Ghanaian. If the CEO is not Ghanaian, the NIC requires that the Chief Financial Officer be Ghanaian. The NIC must approve any non-locally incorporated insurance companies to provide services, and it permits cross-border reinsurance only after local options are exhausted.

On February 7, 2018, the Bank of Ghana (BoG) issued a directive requiring all financial institutions to route domestic payment transactions, including those of international schemes, through the national switch, Ghana Interbank Payment and Settlement Systems Limited (GhIPSS), by July 2, 2018. The BoG directive would give an unfair competitive advantage to GhIPSS, a wholly owned subsidiary of the BoG, which operates its own domestic proprietary card scheme “e-zwich.” The BoG suspended the directive after U.S.

Government officials raised the matter with Ghanaian government officials, but has not officially rescinded the directive.

INVESTMENT BARRIERS

All foreign investment projects must be registered with the Ghana Investment Promotion Center. While the registration process is designed to be completed within five business days, the process often takes significantly longer. Foreign investments are also subject to the following minimum capital requirements: $200,000 for joint ventures with a Ghanaian partner; $500,000 for enterprises wholly-owned by a non-Ghanaian; and, $1 million for trading companies (firms that buy or sell imported goods or services) that are wholly owned by non-Ghanaian entities. Trading companies are also required to employ at least 20 skilled Ghanaian nationals.

Ghana's investment code excludes foreign investors from participating in eight economic sectors: petty trading; the operation of taxi and car rental services with fleets of fewer than 25 vehicles; lotteries (excluding soccer pools); the operation of beauty salons and barber shops; printing of recharge scratch cards for subscribers to telecommunications services; production of exercise books and stationery; retail of finished pharmaceutical products; and the production, supply, and retail of drinking water in sealed pouches.

Mining

Ghana restricts the issuance of mining licenses based on the size of the mining operation. Foreign investors are prohibited from obtaining a Small-Scale Mining License for mining operations that equal an area less than 25 acres (10 hectares). Non-Ghanaians may only apply for a mineral right in respect of industrial minerals for projects involving an investment of at least $10 million.

The 2006 Minerals and Mining Act mandates compulsory local participation, whereby the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary that is incorporated under the Ghana Companies Code or Private Partnership Act.

Oil and Gas

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation holds a minimum 15 percent participating carried interest. The Petroleum Commission issues all licenses, but exploration licenses must be approved by Parliament. Further, local content regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations. These regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Energy must approve all contracts, subcontracts, and purchase orders above $100,000. Non-compliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company's annual revenues, range from $70,000 to $150,000, compared to fees of between $5,000 and $30,000 for local companies.

Local Content and Location Participation Requirements

In December 2017, Ghana introduced regulations requiring local content and local participation in the power sector. The Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) specify minimum initial levels of local participation/ownership and 10 year targets:

Electricity Supply Activity	Initial Level of Local Participation	Target Level in 10 Years
Wholesale Power Supply	15	51
Renewable Energy Sector	15	51
Electricity Distribution	30	51
Electricity Transmission	15	49
Electricity Sales Service	80	100
Electricity Brokerage Service	80	100

The regulations also specify minimum and target levels of local content in engineering and procurement, construction works, post construction works, services, management, operations and staff. All persons engaged in or planning to engage in the supply of electricity are required to register with the Electricity Supply Local Content and Local Participation Committee and satisfy the minimum local content and participation requirements within five years. Failure to comply with the requirements could result in a fine or imprisonment.

Effective January 1, 2019, security services have a 100 percent local content mandate. Under the Classification of New Services Under the Minerals and Mining (Support Services) Regulations, 2012 (LI 2174), Ghana restricts Class B mining support services, which include: catering, camp management and security services, to Ghanaians only. All mine support services, providers, license holders, dealers are expected to comply with this mandate. Non-Ghanaians are not permitted to enter into new contracts for the provision of such services with other mineral rights holders.

OTHER BARRIERS

Foreign investors experience difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining required work permits can be unpredictable and take several months from application to delivery. Obtaining access to land may also be challenging for foreign investors. Foreigners are allowed to enter into long-term leases of up to 50 years and the lease may be bought, sold, or renewed for consecutive terms. Non-Ghanaians are only permitted to acquire interests in land on a long-term leasehold basis, and Ghana's complex land tenure system makes establishing clear title on real estate difficult.

Foreign investors in Ghana also must contend with a politicized business community and a lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption among government and business figures also remains a concern. Ghanaian law enforcement and judicial bodies have robust legal powers to fight corruption in the country, but the government does not implement anticorruption laws effectively.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $2.4 billion in 2018, a 15.3 percent decrease ($440 million) over 2017. U.S. goods exports to Guatemala were $6.6 billion, down 3.6 percent ($246 million) from the previous year. Corresponding U.S. imports from Guatemala were $4.2 billion, up 4.8 percent. Guatemala was the United States' 37th largest goods export market in 2018.

U.S. exports of services to Guatemala were an estimated $1.7 billion in 2017 (latest data available) and U.S. imports were $1.1 billion. Sales of services in Guatemala by majority U.S.-owned affiliates were $687 million in 2016 (latest data available), while sales of services in the United States by majority Guatemala-owned firms were $11 million.

U.S. foreign direct investment (FDI) in Guatemala (stock) was $1.0 billion in 2017 (latest data available), a 5.6 percent increase from 2016.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services, and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environment.

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions.

Under the CAFTA-DR, as of January 1, 2015, all originating U.S. consumer and industrial goods enter Guatemala duty free. Nearly all textile and apparel goods that meet the Agreement’s rules of origin also enter Guatemala duty free and quota free.

In addition, over 95 percent of U.S. agricultural exports enter Guatemala duty free under the CAFTA-DR. Guatemala will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2020, on rice by 2023, and on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen and chilled chicken leg quarters, five years early. For certain products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. The Guatemalan government is required under the CAFTA-DR to make TRQs available on January 1 of each year.

Nontariff Barriers

Customs Barriers and Trade Facilitation

All CAFTA-DR countries, including Guatemala, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal transshipment of goods. Customs information for Guatemala is available on the Guatemalan customs authority, Superintendence of Tax Administration (SAT) website.

U.S. companies have raised concerns that the SAT is using reference prices instead of transaction value (the price paid or payable when goods are sold for export to Guatemala, which is typically reflected as an invoice price) to determine the entered value. SAT's adjusted appraisement drives up costs and lowers U.S. competitiveness in the market. When SAT performs an investigation based on valuation, it can detain the imported product for up to 25 days. Many investigations are ongoing and to date, not one investigation has been resolved in favor of the importer.

U.S. companies report that Guatemalan customs authorities have challenged the validity of claims of origin based on, among other things, differing interpretations of product tariff classification. Upon tariff reclassification, SAT rejects the claim of origin and the higher non-preferential rate is assessed. In cases of rejected claims, SAT has failed to identify in writing the basis of its decisions and has only allowed importers to make one correction to the certification of origin per entry.

Despite the obligation under the WTO Customs Valuation Agreement, Guatemala has not submitted Checklist of Issues replies to the WTO Committee on Customs Valuation. The United States will continue to emphasize the importance of submitting the overdue notification, which is an integral to successful implementation of the WTO Customs Valuation Agreement.

Guatemala has ratified the WTO Trade Facilitation Agreement.

SANITARY AND PHYTOSANITARY BARRIERS

Guatemalan sanitary and phytosanitary import requirements change frequently, often without any prior notification. Import permit requirements frequently change, resulting in a 50 percent initial rejection rate, requiring re-application, delays between five and seven days, and associated demurrage costs.

Although Guatemala published an official list of quarantine pests in November 2016, it has yet to establish a science-based protocol for treating the pests. For example, Guatemala still has a policy to fumigate and then deny entry of containers with quarantine pests, regardless of whether another treatment is possible for select products. This has resulted in unnecessary, inappropriate, and expensive mitigation measures affecting U.S. products.

SUBSIDIES

Export Subsidies

Guatemala employed an export incentive program in the "Law for the Promotion and Development of Export Activities and Drawback" through December 31, 2015. Guatemala provided tax exemptions and duty benefits to companies that imported over half of their production inputs or components and exported their completed products. Investors were granted a 10-year exemption from both income taxes and the Solidarity Tax, which is Guatemala's temporary alternative minimum tax. Additionally, companies were granted an exemption from the payment of tariffs and value-added taxes on imported machinery and a one-year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes were waived when the goods were re-exported. The Guatemalan Congress amended the "Law for the Promotion and Development of Export Activities and Drawback" in February 2016 to replace the tax incentive program that expired in December 2015. The new tax exemptions are applied to apparel and textile companies as well as to information and communication technology service providers, such as call centers and business processes outsourcing (BPO) operations.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases as well as timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Guatemalan government entities, including government ministries and sub-central and state-owned entities, on the same basis as Guatemalan suppliers. The anticorruption provisions in the CAFTA-DR apply, among other things, to government procurement.

Government institutions are required to use the online government procurement system, GUATECOMPRAS, to track government of Guatemala procurement processes since March 2004. GUATECOMPRAS has improved the efficiency and transparency of government tendering processes. However, foreign suppliers must still submit their bids through locally registered representatives, a process that places foreign bidders at a competitive disadvantage.

Guatemala is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement**.**

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2018 Special 301 Report. While Guatemala's National Police and Attorney General's Office significantly increased intellectual property (IP) prosecutions in 2016, the number of enforcement raids and convictions declined significantly in 2017 and remained at this level in 2018. IP enforcement activities remain limited and inadequate in relation to the scope of the problem due to resource constraints and lack of coordination among law enforcement agencies. The United States continues to urge Guatemala to strengthen enforcement, including criminal prosecution, and administrative and customs border measures. Pirated and counterfeit goods continue to be widely available, and Guatemala has reportedly become a source of counterfeit pharmaceutical products. Trademark squatting is also a significant concern. One positive development in combatting cable signal piracy began in March 2018. Major cable providers refrained from renewing contracts with services providing unauthorized content and removed these broadcast channels from their systems. Government use of unlicensed software is a serious problem that remains largely unaddressed. Additionally, the United States continues to urge Guatemala to provide greater clarity in the scope of protection for geographical indications (GIs), including by ensuring that all producers are able to use common food names, including any that are elements of a compound GI. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Professional Services

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

INVESTMENT BARRIERS

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations effectively operate as barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming, and civil cases can take many years to resolve. U.S. firms and citizens have found corruption in the government, including in the judiciary, to constrain investment. The CAFTA-DR contains strong public sector antibribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries inhibit current and potential investment by U.S. firms.

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was $897 million in 2018, a 80.0 percent increase ($399 million) over 2017. U.S. goods exports to Honduras were $5.6 billion, up 10.2 percent ($521 million) from the previous year. Corresponding U.S. imports from Honduras were $4.7 billion, up 2.7 percent. Honduras was the United States' 41st largest goods export market in 2018.

U.S. exports of services to Honduras were an estimated $1.2 billion in 2017 (latest data available) and U.S. imports were $666 million. Sales of services in Honduras by majority U.S.-owned affiliates were $555 million in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Honduras (stock) was $1.4 billion in 2017 (latest data available), a 9.5 percent increase from 2016. U.S. direct investment in Honduras is led by manufacturing, wholesale trade, and wholesale trade.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services, and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environment.

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Honduras applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions.

Under the CAFTA-DR, 100 percent of U.S. consumer and industrial goods enter Honduras duty free. Nearly all textile and apparel goods that meet the Agreement’s rules of origin also enter Honduras duty free and quota free, creating opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

In addition, most U.S. agricultural exports enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2025. Honduras will eliminate tariffs on yellow corn and pork by 2020; on rice and chicken leg quarters by 2023; and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. The Honduran government is required under the CAFTA-DR to make TRQs available on January 1 of each year. Honduras monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure Honduran issuance of these permits occurs in a timely manner.

Nontariff Barriers

Local Content Requirements

In July 2017, the Honduran government implemented a "voluntary" local purchase requirement for pork importers. Under this revised version of a previous program, importers are required to purchase a quantity of Honduran live hogs at an established price from a specific local company, even when local prices are higher than imports. In June 2018, importers agreed to continue buying local production, but without a required amount, from producers independently selected by the importers and at market rates. Importers remain concerned that the Honduran government may pressure importers to increase local purchases going forward.

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Honduras, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including Honduras, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal transshipment.

In February 2016, the government of Honduras formally separated customs functions from the tax collection authority Direccion Ejecutiva de Ingresos (DEI). The new customs institution, Direccion Adjunta de Rentas Aduaneras (DARA), operates under a mandate to guarantee trade facilitation and customs duties collection using efficient controls and best practices to promote increased economic activity and development in Honduras. DARA is also tasked with verifying claims of origin to demonstrate eligibility for CAFTA-DR as well as other international agreements.

DARA was subsequently placed under oversight of the Presidential Commission for Integral Reform of the Customs System (COPRISAO) on November 21, 2016, in response to recurrent private sector complaints involving procedural delays for entry and release of goods at Honduran customs. Public sector representatives administer COPRISAO with the aim of simplifying import/export procedures and improving efficiency. To assist the Honduran government in building COPRISAO's technical capacity, the U.S. Embassy launched a Customs Task Force. U.S. involvement includes site visits to view U.S. port operations, trainings and workshops for customs personnel, and technology exhibitions with U.S. companies.

On November 6, 2014, Honduras submitted replies to the Checklist of Issues to the WTO Committee on Customs Valuation. In September 2015, the United States raised concerns that several Honduran provisions may not fully implement the WTO Customs Valuation Agreement and submitted formal questions (G/VAL/W/268). The United States will continue to emphasize the importance of submitting replies to the Checklist of Issues, which is integral to successful implementation of the WTO Customs Valuation Agreement.

In July 2016, Honduras formally ratified the WTO Trade Facilitation Agreement (TFA) and availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Honduras notified two of four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

As of March 2019, the government of Honduras has yet to pass legislation to establish a National Trade Facilitation Committee (NTFC). USAID has supported the development of the NTFC organizational charter, governance of the committee, and mediation of the government of Honduras and private sector in drafting the originating legislation.

In July 2018, USAID launched its Trade Facilitation and Integrated Border Management Activity (Trade III). The five-year, $17 million award aims to enhance regional economic integration and trade facilitation, focusing on improving facilitation in the Northern Triangle countries.

Guatemala and Honduras formed a Customs Union on June 26, 2017, to foster and increase efficient cross-border trade. The two countries opened a bi-national facility located at the Corinto port-of-entry (POE) in Cortes, Honduras, as the first joint POE in the Americas to incorporate the transmission of advanced information to facilitate cargo processing. On July 20, 2018, El Salvador approved joining the Customs Union with Guatemala and Honduras.

During 2017's presidential election campaign, President Juan Orlando Hernandez revived the Zona de Empleo y Desarrollo Económico (ZEDE) initiative to boost foreign investment and job creation. The government of Honduras originally proposed the semi-autonomous administrative zones in 2011 and signed a ZEDE law in 2013, but momentum slowed after concerns emerged about labor rights, land issues, and environmental protection. In August 2017, President Hernandez proposed ZEDEs as a catalyst to economic development and reducing unemployment. In October 2017, the government of Honduras announced plans to develop seven ZEDEs throughout Honduras. While planning for some ZEDEs appears to be underway, the Honduran government had yet to fully approve any ZEDE as of December 2018.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Product Registration

Product registration is a legal requirement for marketing products in Honduras. Registration of products with the Ministry of Health has been particularly burdensome for importers. The U.S. Government played a key role in providing technical assistant to the government of Honduras to support efforts to create a more streamlined product registration system. The government of Honduras shifted management of product registration from the Ministry of Health to the newly established Sanitary Regulatory Agency (Agencia de Regulacion Sanitaria, ARSA). ARSA improved the efficiency of the registration process for imported products. In 2017, the agency granted 9,000 of 13,000 pending sanitary registrations, and by the end of 2018 the entire backlog was cleared.

Sanitary and Phytosanitary Barriers

In early 2019, the Honduran customs authority imposed a sales tax on pork rib imports because the product description was in English. Since 2014 (Decree 005-2014), many common food items have been exempt from the 15 percent sales tax, including many pork cuts. The official list shows cuts that are tax exempt and cuts that are not tax exempt. The non-tax exempt cuts are those with a product description in English, even though they are the same cuts as those listed as tax exempt but with a product description in Spanish.

SUBSIDIES

Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain pre-existing duty waiver measures for such time given its status as an Annex VII "developing country" for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. Honduras provides tax exemptions to firms in free trade zones. Honduras currently employs the following export incentive programs: Free Trade Zone of Puerto Cortes (ZOLI), Export Processing Zones (ZIP), and Temporary Import Regime (RIT).

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers can bid on the procurements of most Honduran government entities, including those of key ministries and state-owned enterprises, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR apply, *inter alia*, to government procurement.

Efforts to strengthen Honduran procurement systems are also underway. On January 9, 2017, the government of Honduras launched the National Procurement Office's (ONCAE's) new procurement certification program to improve the accountability and competency of its staff. However, as of March 2019, only three of ten new staff positions had been filled with full-time permanent civil service employees despite GOH commitments to address the issue. As part of ONCAE's State Contracting and Procurement Efficiency Program to simplify the bidding process, Honduras implemented a national "Standard Bidding Document," which has been accepted by multilateral financing entities such as the Inter-American Development Bank and the World Bank.

Honduras is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States worked closely with the government of Honduras as it developed a Work Plan, in early 2016, to improve the protection and enforcement of intellectual property rights (IPR) in Honduras. Despite the government of Honduras' commitment under the 2016 plan, significant challenges remain. Concerns remain with Internet-based piracy, software infringement, piracy of cable signals, and the unauthorized distribution and sale of counterfeit cosmetics, movies, music, pharmaceuticals, and toys. Unexpected staffing changes at the Public Ministry hinder the prosecution of IPR violations, including the sudden removal of the special prosecutor for IPR in September 2018 and the appointment of a new head prosecutor for the office in October 2018. However, during 2018, Honduras continued ongoing IPR-focused criminal enforcement operations, such as seizures and inspections, often with the support of U.S. Embassy entities, such as the Department of Homeland Security's HSI Transnational Criminal Investigative Unit (TCIU). In March 2019, the United State Patent and Trademark Office conducted a training workshop in Honduras for judges from throughout the region.

SERVICES BARRIERS

U.S. firms and citizens report a significant concern with obtaining government permits, particularly in real estate transactions, and meeting regulatory requirements in the telecommunications, health, and energy sectors.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, the law allows foreigners to purchase properties (with some acreage restrictions) in designated zones established by the Ministry of Tourism in order to construct permanent or vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras. During 2018, community opposition stalled construction of several large-scale infrastructure projects, representing an estimated $1 billion in pending investment. Several violent protests occurred on the private property of projects involving U.S. investors, particularly in the extractive and energy sectors.

OTHER BARRIERS

Bribery and Corruption

The Honduran government has undertaken several measures in an effort to address corruption, including pursuing indictments against current and former government officials; partnering with the Organization of American States, beginning in 2016, to create the independent Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH); signing international transparency initiatives, such as the Construction Sector Transparency Initiative; and dedicating resources to bolster existing commitments under initiatives such as the Open Government Partnership and the Extractive Industry Transparency Initiative. The CAFTA-DR also contains strong public sector antibribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities. Despite these efforts and bilateral commitments, U.S. firms and citizens continue to report corruption in the government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. These reports suggest that corruption is pervasive in government procurement, the issuance of government permits, and the regulatory system in general. Telecommunications, health, and energy sectors also appear to be particularly problematic, as do real estate transactions (particularly land title transfers). In 2018, several U.S. real estate investors involved in property disputes stemming from falsified land titles faced violence and threats.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $31.1 billion in 2018, a 4.3 percent decrease ($1.4 billion) over 2017. U.S. goods exports to Hong Kong were $37.5 billion, down 6.2 percent ($2.5 billion) from the previous year. Corresponding U.S. imports from Hong Kong were $6.3 billion, down 14.4 percent. Hong Kong was the United States' 10th largest goods export market in 2018.

U.S. exports of services to Hong Kong were an estimated $11.9 billion in 2017 (latest data available) and U.S. imports were $9.8 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $26.0 billion in 2016 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $5.8 billion.

U.S. foreign direct investment (FDI) in Hong Kong (stock) was $81.2 billion in 2017 (latest data available), a 17.8 percent increase from 2016. U.S. direct investment in Hong Kong is led by nonbank holding companies, wholesale trade, and finance/insurance.

OVERVIEW

Hong Kong is a special administrative region (SAR) of the People's Republic of China. The Hong Kong Basic Law provides for a high degree of autonomy, although Hong Kong's foreign relations and defense are the responsibility of China. Hong Kong is a separate customs territory, is able to enter into international agreements on its own behalf in commercial, economic, and certain legal matters, has its own trade laws and regulations, and is a separate member of both the World Trade Organization (WTO) and the Asia-Pacific Economic Cooperation (APEC) forum.

IMPORT POLICIES

The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port, with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Despite its obligation under the WTO Customs Valuation Agreement, Hong Kong has not submitted Checklist of Issues replies to the WTO Committee on Customs Valuation. The United States will continue to emphasize the importance of submitting this overdue notification, which is integral to successful implementation of the WTO Customs Valuation Agreement.

TECHNICAL BARRIERS TO TRADE

The Hong Kong Code of Marketing of Formula Milk and Related Products and Food Products for Infants and Young Children (Infant Formula Marketing Code) became effective in June 2017. While the Hong Kong government maintains that the Infant Formula Marketing Code is based on World Health Organization guidance and purportedly voluntary, the move prompted concerns within U.S. industry that the Infant Formula Marketing Code will become *de facto* "mandatory" if the Hong Kong Hospital Authority requires it as part of any tender. Although U.S. industry has not raised new or further concerns over the past year, the United States continues to monitor this issue.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Hong Kong generally provides robust intellectual property rights (IPR) protection and enforcement and for the most part has strong laws in place. Hong Kong also maintains a dedicated and effective enforcement capacity, a judicial system that supports enforcement efforts with deterrent fines and criminal sentences, and youth education programs that discourage IPR-infringing activities. On the other hand, Hong Kong's failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy. Lacking an updated copyright system, the Hong Kong Customs and Excise Department (HKCED) has stepped up enforcement actions to combat digital piracy. In addition, while the HKCED routinely seizes IPR-infringing products arriving from mainland China and elsewhere, U.S. stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to transit through Hong Kong in significant quantities. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $21.3 billion in 2018, a 7.1 percent decrease ($1.6 billion) over 2017. U.S. goods exports to India were $33.1 billion, up 28.9 percent ($7.4 billion) from the previous year. Corresponding U.S. imports from India were $54.4 billion, up 11.9 percent. India was the United States' 13th largest goods export market in 2018.

U.S. exports of services to India were an estimated $23.7 billion in 2017 (latest data available) and U.S. imports were $28.1 billion. Sales of services in India by majority U.S.-owned affiliates were $27.0 billion in 2016 (latest data available), while sales of services in the United States by majority India-owned firms were $17.0 billion.

U.S. foreign direct investment (FDI) in India (stock) was $44.5 billion in 2017 (latest data available), a 15.1 percent increase from 2016. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.

TRADE AGREEMENTS

India reports that it has 18 bilateral or regional trade agreements in force, including the Asia Pacific Free Trade Agreement (APTA); India-Australia Comprehensive Economic Cooperation Agreement; India-Singapore Comprehensive Economic Cooperation Agreement; and, the India-Indonesia Comprehensive Economic Cooperation Agreement. In June, as part of their commitments under APTA, India lowered import duties on over 3,000 products to APTA signatories, including China and Korea, with whom it has large trade deficits.

India is engaged in negotiations or formal discussions on: (1) the proposed Regional Comprehensive Economic Partnership (RCEP) Free Trade Agreement that includes the ten Association of South East Asian Nations (ASEAN) member countries as well as Australia, China, Japan, Korea, and New Zealand; (2) the India-Canada Comprehensive Economic Cooperation Agreement; (3) the India-European Union Broad Based Trade and Investment Agreement; (4) the India-Israel Free Trade Agreement; and, (5) the India-Gulf Cooperation Council (GCC) Free Trade Agreement. The Indian Ministry of Commerce projected that 60 percent of India’s future trade would be covered by free trade agreements, including agreements with countries such as Argentina, Brazil, China, Pakistan, and Paraguay.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to increase access to India’s market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter significant tariff and nontariff barriers that impede imports of U.S. products into India.

Tariffs and Taxes

Tariffs

India’s average Most Favored Nation (MFN) applied tariff rate of 13.8 percent remains the highest of any major world economy. Since 2014, the Modi government has promoted the Make in India campaign, a drive to build the country’s manufacturing capacity in part by cutting barriers to foreign investment and introducing regulatory reforms. As part of the campaign, the government has raised duties on two broad groups of products to encourage domestic production: (1) an assortment of labor-intensive products; and (2) electronics and communications devices, including mobile phones, televisions, and associated parts and components.

On June 20, 2018, India announced an intention to adopt tariffs ranging from 10 to 50 percent on various products imported from the United States, in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The new tariffs would apply to a range of agricultural and manufactured products, including products of steel. On February 26, 2019, India announced that it would further delay the implementation of these tariffs until April 1, 2019. The United States has urged India to work to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation.

India maintains very high tariffs on a number of goods, including flowers (60 percent), natural rubber (70 percent), automobiles (60 percent), motorcycles (50 percent), raisins and coffee (100 percent), and alcoholic beverages (150 percent). India also operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's list of essential medicines.

India's tariff regime is also characterized by pronounced disparities between WTO bound rates and the MFN applied rates. India's WTO bound tariff rate averaged 48.5 percent, while its applied MFN tariff for 2017 (latest data available) averaged 13.8 percent. Many of India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.5 percent and ranging as high as 300 percent. Applied agricultural tariff rates are also high and average 32.8 percent. While certain Indian agricultural applied tariff rates are lower, they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). In addition, while India has bound all agricultural tariff lines in the WTO, nearly 30 percent of India's non-agricultural tariffs remain unbound.

Given this large disparity between WTO bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. For example, from November 2017 through March 2018, India raised import duties from zero percent to 60 percent on chickpeas, 50 percent on peas, 40 percent on large chickpeas, and 30 percent on lentils, severely impacting U.S. pulse exports to India.

The government of India took advantage of this tariff flexibility in the 2018 budget when it increased tariffs on 52 separate line items, including key U.S. exports in the agricultural, information and communications technology, and automobile parts sectors, with no warning or public consultation process. The increased tariffs also included agricultural products such as certain fruit juices (from 30 percent to 35 percent), certain edible vegetable oils (from 20 percent to 35 percent), and several other agricultural and non-agricultural items.

India also further raised duties on several information and communications technology products, including cell phones, from 15 percent to 20 percent. Prior to the tariff increases, these products were imported duty-free. Duties on auto components such as engine and transmission parts, brakes, suspensions, gear boxes, and airbags increased to 15 percent from 7.5 percent in the case of some products and from 10 percent in the case of others. In addition, a new 10 percent tariff on imports, labeled the "social welfare surcharge," was instituted without public notice or consultation. The "social welfare surcharge" is applied to the aggregate of duties, taxes and cesses assessed on imports.

In September 2018, India increased import duties again on 19 items in an attempt to narrow a widening current account deficit and relieve downward pressure on the rupee against other world currencies. Tariffs were increased on jet fuel and 18 other items deemed non-essential, including air-conditioners, refrigerators, and small washing machines as well as products such as footwear, tableware, suitcases, gold and silver jewelry, and semi-processed diamonds.

Taxes

Prior to the introduction of the Good and Services Tax (GST) system in July 2017, India maintained a complex and opaque system of taxes, excise duties, and other charges. Imports were subject to state-level value-added or sales taxes and the Central Sales Tax as well as various local taxes and charges. The new GST simplified the regime by unifying India into a single market and improving the ease of doing business. The new GST is made up of three main taxes: Central GST (CGST) is a fee collected by the central government for sales in all states; State GST (SGST) is a fee collected by each state for sales within a state; and Integrated GST (IGST) is a fee collected by the central government for sales between states.

Under the new system, goods and services are taxed under four basic rates: 5 percent, 12 percent, 18 percent, and 28 percent. Some items such as bread, fresh fruits and vegetables, and certain dairy products have been exempted from GST, but are subject to certain preexisting taxes. While implementation challenges remain, India's GST council meets regularly to adjust GST rates and provide clarifications and revisions to GST policy.

Nontariff Barriers

Medical Device Price Controls

Twenty three medical devices have been notified as drugs and are regulated under Drugs and Cosmetics Act. Of these, only four devices – cardiac stents, drug eluting stents, condoms, and intra-uterine devices – are included in the National List of Essential Medicines, which provides India's Department of Pharmaceuticals and National Pharmaceutical Pricing Authority (NPPA) the authority to implement price ceilings. On February 13, 2017, NPPA issued an order to cap prices of coronary stents. In addition, knee implants have been brought under price control under Paragraph 19 of the Drugs (Prices Control) Order 2013. The remaining medical devices are under no price regulation. U.S. companies have raised significant concerns with these actions. Price controls for cardiac stents and knee implants do not differentiate for technological innovation and limit U.S. companies' access to the Indian market.

Ethanol Import Restrictions

India restricts ethanol imports through a tendering process that requires ethanol from indigenous feedstock to be blended with transport fuel. India further limited ethanol imports in August 2018 by prohibiting the import of ethanol for fuel use. On June 4, 2018, the government of India released the National Policy on Biofuels 2018, in which it sets a target of 20 percent blending of ethanol with gasoline and a target of 5 percent blending of ethanol with biodiesel by 2030. Currently, India's ethanol fuel penetration levels are far below those target levels.

Import Bans, Import Restrictions, and Import Licensing

India maintains various forms of nontariff regulations on three categories of products: banned or prohibited items, which are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and "canalized" items (*e.g.*, some pharmaceuticals) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity. India often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees. However, the official website of the Director General of Foreign Trade maintains a list of restricted items.

India distinguishes between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned, when assessing whether licenses are required. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India requires import licenses for all remanufactured goods. India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. U.S. stakeholders report that obtaining an import license for remanufactured goods has been onerous. Problems that stakeholders report include: excessive details required in the license application; quantity limitations set on specific part numbers; and long delays between application and grant of the license. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of designed operating life, while refurbished computer parts from domestic sources are not subject to this requirement.

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions, other requirements that only apply to imports, and long periods of time sometimes pass without the issuance any import licenses. A certificate from the Central Excise Authority and no objection certificates (NOCs) are required from the relevant government ministry before an application for an import permit can be submitted to the Ministry of Agriculture and Farmers Welfare's (MAFW) Central Insecticides Board and Registration Committee (CIBRC). In order to receive a certificate from the Central Excise Authority, importers of boric acid for non-insecticidal use must identify end-users of the product, which is often not possible in advance of a shipment, and consequently they cannot obtain an NOC. In addition, importers must provide confirmation of the last three years of the company's purchases of boric acid, separated out by the quantity imported and procured locally in India, as well as data on the total output of the finished product that utilized the boric acid for the previous three to five years. Once a Central Excise Authority certificate is received, the relevant government ministry must provide a NOC for a recommended quantity to the CIBRC. Meanwhile, local refiners continue to be able to produce and sell boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat justifying the legal rationale with respect to boric acid imports. In addition, in August 2017, the Indian government announced quantitative restrictions on all pesticides and insecticides. While it later rescinded the restrictions because of its inability to deploy the relevant software to support the action, there remains uncertainty regarding the future implementation of these restrictions. The United States has urged India to eliminate its import licensing requirements in meetings of the WTO Import Licensing Committee and through the Trade Policy Forum (TPF).

In order to manage domestic oversupply of pulses, the Indian government began imposing restrictions on imports of various pulses in 2017. In August 2017, India imposed an Indian fiscal year annual import quota of 200,000 metric tons (MT) on imports of Pigeon peas; an annual import quota of 300,000 MT on black matpe beans (Urd or Vigna radiate) and mung beans (Moong or Vigna mungo); and an annual quota of 300,000 MT on moong and urad lentils. In April 2018, the Indian government revised the import policy for peas, restricting imports to 100,000 MT for a period of three months. India has continued to extend the import restrictions on peas, issuing extensions every three months, despite significant objection by the United States and other trading partners. As a result of the continuing quotas and tariff increases on pulses since November 2017 (discussed above), U.S. pulse exports to India totaled only $6 million during the first seven months in 2018, compared to $31 million during the same period in 2017.

Customs Barriers and Trade Facilitation

In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and contain numerous exemptions that vary according to the product, user, or specific export promotion program, rendering India's customs system complex to decipher and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. India's valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising the cost of exporting to India beyond applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have also reported being subjected to excessive searches and seizures of imports.

Through Notification No. 91/2017-Customs (N.T.) dated September 26, 2017, India amended Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to allow for the actual cost of transportation and insurance to be included when determining the assessable value of the imported product. Prior to this amendment, the cost of loading, unloading and handling charges, and cost of transportation and insurance were included in the assessable value at one percent of the free on board (FOB) value irrespective of the actual cost. With the new amendments, the actual cost is assessable; if the cost of transportation, loading, unloading, and handling charges is not ascertainable, then it is deemed to be 20 percent of the FOB value. If the good is imported by air freight the cost is limited to 20 percent of the FOB value even if the actual cost is higher.

India publishes applied tariffs and other customs duty rates applicable to imports, and in 2018, debuted its India Trade Portal in cooperation with the Federation of Indian Exporters. Among other information, the India Trade Portal seeks to provide updated information on the latest tariff and duty rates, searchable by Harmonized System codes. As part of its computerization and electronic services effort, India also maintains the web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE. It provides options for calculating duty rates, electronic filing of certain import declarations and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure, including the provision of multiple exemptions varying according to product, user, or intended use, also creates uncertainty and contributes to delays in customs approvals. However, while difficulties persist, India has shown improvement in this area through the automation of trade procedures, including through the ICEGATE portal and other initiatives previously referenced. The government of India is increasing the use of electronic forms. India is also building a single window for customs documents. As a result of this process, India now only requires three documents for importers and exporters for approvals from the 13 separate government agencies that are currently incorporated into the single window. This has reduced customs processing times from weeks to days.

After ratifying the WTO Agreement on Trade Facilitation (TFA) in April 2016, India established the National Committee on Trade Facilitation (NTFC) in August 2016. In July 2017, the NTFC debuted a road map for trade facilitation for India, and it will facilitate domestic co-ordination and implementation of TFA provisions. The United States and India held joint workshops covering best practices in trade facilitation in October 2016 and in September 2018. The workshops included both Indian and U.S. industry representatives and focused on implementing the TFA and customs reforms expeditiously to facilitate trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

In addition to discussing technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) matters with Indian officials under the Trade Policy Forum (TPF), the United States discusses these trade issues with India during TBT and SPS Committee meetings at the World Trade Organization (WTO), as well as on the margins of those meetings. The last United States-India Intersessional Trade Policy Forum (ITPF) was held April 9-11, 2018 in New Delhi, India.

Technical Barriers to Trade

Cosmetics – Registration Requirements

On November 29, 2018, India's Ministry of Health and Family Welfare (MOHFW) invited comments on a new draft of the Cosmetics Rules. U.S. stakeholders provided comments to India encouraging a risk-based regulatory framework for cosmetics without unnecessary pre-approvals that aligns with international standards and industry best practices with a reasonable timeframe for implementation.

On December 12, 2018, India increased registration fees for importers of cosmetics. As a result, the registration fee is now $2,000 for each cosmetic brand. India also added a new $50 fee for each product variant. U.S. companies have raised concerns these fees disadvantage imported products by raising costs.

Separately, India banned imports of animal-tested cosmetics on February 15, 2015, as a result of Rule 135-B of the Drug and Cosmetics (Fifth Amendment) Rules, 2014, announced through the Central Drugs Standard Control Organization (Office of Drugs Controller General India) Circular. India had previously banned domestic cosmetic testing on animals in May 2014, per the Gazette of India, Ministry of Health and Family Welfare, "Notification" dated May 21, 2014. U.S. exporters have reportedly encountered difficulties proving that cosmetics comply with the animal testing ban and have yet to receive guidelines from the Indian government on how to do so.

Food – Package Size and Labeling Requirements

In 2018, the Food Safety and Standards Authority of India (FSSAI) proposed a set of regulations called the Food Safety and Standards (Labelling and Display) Regulations, which is an amendment to the Food Safety and Standards Act of 2006. The proposed regulations would prescribe the labeling requirements for pre-packaged foods to display essential information on where the food is manufactured, processed, served, and stored. The proposed regulation also allows FSSAI to establish an internal mechanism to address problems arising out of the implementation and/or interpretation of the regulations.

The government of India mandated standard retail package sizes for 19 categories of foods and beverages effective November 1, 2012, via an amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule has not been notified to the WTO, nor was there a specific public comment period for domestic stakeholders prior to implementation. As the United States does not impose specific standards for packaging size, and U.S. package sizes tend to be in English rather than metric units, the list of package sizes prevents many U.S.-origin products from entering India. Attempts to import such U.S.-origin products have resulted in rejection at the port of entry. These standards have a negative effect on trade, with numerous U.S. brands effectively excluded from the Indian market. The United States continues to raise concerns about these standards in various bilateral and multilateral fora in an effort to ensure that U.S. products have access to the Indian market.

Labeling of Genetically Engineered Food and Agricultural Products

India's labeling requirements for packages containing genetically engineered foods remains unclear. Further, there is a lack of clarity regarding jurisdictional authority between the FSSAI and the Ministry of Consumer Affairs that could have negative effects on U.S. crops and products derived from biotechnology entering the Indian market. Also, the MAFW has issued regulations that have significantly limited the incentive for research and development, as well as investment in the agriculture biotechnology sphere. These include the Cotton Seed Price Control Order, 2015, the March 2016 Notification that established the maximum sale price of Bt cottonseed packets (including the royalty fee), and the May 2016 Licensing and Formats for GM Technology Agreement Guidelines.

Livestock Genetics

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) of the MAFW imposes restrictions on imports of livestock genetics and establishes quality standards. The entire procedure for obtaining import permission generally takes upwards of four months or longer. Importation of animal genetics requires a "no objection certificate" (NOC) from the state government, import permission from the Directorate General of Foreign Trade (DGFT), and an import permit from the DAHDF. However, domestic producers of animal genetics are not required to obtain an NOC.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin. India has explained that its position is based on religious and cultural grounds. This requirement, along with high tariff rates, continues to prevent market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. In order to address India's religious and cultural concerns, in 2015, the United States proposed a labeling solution to allow for consumer choice between dairy products derived from animals that have or have not consumed feeds with ruminant protein. India rejected that proposal. In March 2018, the United States proposed a revised labeling requirement for imported dairy to DAHDF, but it has rejected that proposal as well. The United States continues to press the Indian government to provide access to the Indian dairy market.

Alcoholic Beverage Standards

On April 5, 2018, FSSAI published the final version of its mandatory beverage alcohol standards and labeling requirements, the Food Safety Standards (Alcoholic Beverages) Regulations, 2018. While the final version of the regulation addressed some of the issues that the United States had raised with India in response to its review of previous drafts of the regulation, the United States still has several concerns over content of the final regulation, including: India-specific labelling requirements, certain product definitions, production method specifications, compositional requirements and ingredient limits, alcohol by volume limits, serving size criteria that contradict standard international practice, and maximum residue levels for many chemical contaminants for which standards do not exist in Codex Alimentarius Commission (Codex). This new standard would also build on already onerous labeling and testing requirements. The United States views India as an important export market for alcoholic beverages and continues to press the government of India to improve its restrictive approach to the regulation of alcoholic beverages in India.

Security and Safety Testing Requirements for Equipment

In September 2017, India's Ministry of Communications, Department of Telecommunications published the Indian Telegraph (Amendment) Rules, 2017, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, India proposed the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which will likely require local security testing for telecommunication products and are slated to go into effect in August of 2019. It is unclear whether lab capacity will increase sufficiently to be able to implement the testing criteria. U.S. industry remains concerned with the in-country testing requirements and lack of clarity over the measure's scope. U.S. officials, bilaterally under the TPF and in the WTO TBT Committee, continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition Arrangement, to which India is a signatory.

Since 2012, the United States has been actively raising the concerns of the U.S. electronics and information and communications technology manufacturers regarding MEITY's Compulsory Registration Order (CRO). The CRO prescribes safety standards and in-country testing requirements for electronic and information and communications technology goods. The policy, which entered into force in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited by the Bureau of Indian Standards (BIS), even if the products have already been certified by accredited international laboratories. The government of India has never articulated how such a domestic certification requirement advances India's legitimate public safety objectives. In 2017, the coverage of the CRO increased to 44 product categories. U.S. stakeholders have raised concerns regarding delays in product registration due to the lack of government testing capacity, a cumbersome registration process, canceled registrations for administrative reasons unrelated to safety, and additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The domestic testing requirement is particularly burdensome for Highly Specialized Equipment (HSE), including servers, storage, printing machines, and information and communications technology (ICT) products that are installed, operated, and maintained by professionals who are trained to manage the product's inherent safety risks. These products pose little risk to the general public or consumers. U.S. companies have incurred significant expenses providing testing samples within limited time frames. The samples are also often destroyed during the safety testing process in Indian laboratories. Indian laboratories have also indicated that they do not have the capacity to test some products that require industrial power supply, exceed household or office voltage, or are very large in size and weight. Moreover, U.S. exporters are forced to leave their products in these laboratories for extended and undefined periods of time. To avoid unnecessary and overly burdensome requirements, the United States has recommended to the government of India that it should exclude HSE from the scope; recognize internationally accredited labs, harmonize labeling requirements with global practices; harmonize the validity period of test reports and certification; and eliminate re-testing requirements. The United States raised this issue bilaterally, including during technical exchanges under the TPF, and multilaterally in the WTO TBT Committee in 2018.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's SPS-related trade restrictions in bilateral and multilateral fora including the TPF, the WTO SPS Committee, and Codex. The United States will continue to make use of all available fora with a view to securing the entry of U.S. pork, and other agricultural products, including alfalfa hay, cherries, strawberries, shrimp feed, and pet food, among others, into the Indian market. As part of the TPF, the United States and India met for a plant health bilateral meeting in April 2018, followed by an animal health bilateral meeting in September 2018 in India. The United States continues to raise SPS-related concerns that inhibit U.S. agriculture exports to India.

Food – Product Testing

Importers have expressed concerns with FSSAI's batch-by-batch inspections at the port because of high cost and the detention of cargoes for indeterminate periods of time, which is particularly costly with respect to perishable products. In June 2015, India announced a plan to transition its imported food inspection protocol from batch-by-batch inspections and sampling to a risk-based approach. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk-based inspection system and provided a general overview of their approach. The United States continues to collaborate with India on developing more specific guidance and a timeline to transition its inspections protocols.

On April 1, 2016, the Indian Central Board of Indirect Taxes and Customs (CBIC) launched its Single Window Interface for Facilitating Trade (SWIFT) system. This is an initiative by the government of India to streamline clearances for inbound consignments and to improve the ease of doing business. Along with SWIFT, the CBIC also introduced an Integrated Risk Management facility for partner government agencies. The facility is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that that foods that present actual food safety risks are tested while goods that pose little to no risk can avoid becoming subject to unnecessary procedures by inspection agencies. In the modified Food Import Regulations published September 2, 2016, FSSAI stated that a risk-based random sampling will be followed wherein the samples will be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk-based inspection system and provided a general overview of their approach. However, market sources report that the risk-based inspection system is not yet fully operational as software linking with SWIFT and mapping by CBIC is still in being developed. CBIC and FSSAI officials are working together in this evolving process and hope to fully implement the system in the coming years.

Food – Product Approval

FSSAI's product approval process has been under intense media and political scrutiny since August 2015 when the Supreme Court of India upheld an earlier decision by the High Court of Bombay that FSSAI did not have the legal authority to maintain its product approval regime. FSSAI stopped issuing product approvals in order to come into compliance with the Supreme Court's decision and is seeking a new approach to regulate new food and beverage products. On October 4, 2016, FSSAI published its new draft regulation called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2016." On September 11, 2017, FSSAI, after incorporating the comments received on the draft Regulation, published the final Regulation on product approval called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2017." The final regulation lists the categories of food or food ingredients, mainly novel foods, that require approval. These food products have been termed by FSSAI as "non-specified food and food ingredients." With the final regulation in place, the pathway to product approval still appears opaque and remains non-transparent; the new approval process could effectively block market innovations, product launches, and affect U.S. trade.

Foods Derived from Biotechnology Crops

Biotechnology products must be approved by the Genetic Engineering Appraisal Committee (GEAC), before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. However, the FSSAI began drafting the regulations in 2018, and it may take several years to implement the regulations on GE foods. India's biotechnology approval processes are also slow, opaque, and subject to political influences. For example, GEAC's recent progress toward approving a public sector, domestically developed GE mustard plant variety for commercial cultivation was further delayed pending additional government review; the Indian government has yet to make a decision on whether to allow its sale. Consequently, soybean oil and canola oil, derived from GE soybeans and canola, remain the only biotechnology food or agricultural products currently approved for import into the Indian market, and Biotech (Bt) cotton is the only biotechnology crop approved for commercial cultivation in India. In January 2017, GEAC set up a sub-committee for drafting guidelines for imports of Dried Distillers Grain Solubles (DDGS). In May 2017, GEAC discussed the preliminary submission of the subcommittee and advised further consultations with relevant stakeholders before submitting a final report to GEAC. In 2018, the United States continued engagement with the government of India, including with GEAC, to encourage the finalization of an import protocol that would permit the import of U.S. DDGS. This slow and uncertain approval process continues to negatively impact product registrations needed to facilitate trade in biotechnology products. Without enhanced capacity for science-based decision making, India's acceptance and approval of additional agricultural biotechnology products will remain limited.

Pork

In November 2015, India released a revised universal veterinary health certificate for import of pork and pork products detailing requirements for processing facilities, veterinary drug residues, and animal disease restrictions. In September 2016, the United States proposed a letterhead certificate to supplement the U.S. standard veterinary health certificate with additional attestations that address India's universal certificate. The United States responded to India's request for more information on October 24, 2017, and India assured expedited examination of the information provided with the goal of finalizing an export certificate as soon as possible. In response to India's request, the United States submitted further information in May and July 2018. The United States continues to work with the Indian government to resolve the issue.

Poultry

In 2012, the United States commenced WTO dispute settlement proceedings against India due to India maintaining import prohibitions on various agricultural products, including poultry and poultry products, from the United States, ostensibly due to concerns regarding avian influenza. In 2014, the WTO panel issued its report, finding in favor of the United States. The Appellate Body affirmed these findings, concluding that India's restrictions: (1) are not based on international standards or a risk assessment that takes into account available scientific evidence; (2) arbitrarily discriminate against U.S. products; (3) are more trade restrictive than necessary; and, (4) fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined. In 2016, the United States requested authorization from the Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" that the parties agreed to. The United States' request was referred to arbitration. On April 6, 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India's WTO obligations.

In 2018, the United States and India on several occasions postponed both the release of the Arbitrator's decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding while the two sides discuss potential resolution of the dispute. In March 2018, the United States and India agreed to veterinary export certificates for the shipment to India of U.S. poultry and poultry products.

Plant Health

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that are not based on risk assessments and result in blocked U.S. wheat and barley imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date. The government of India's requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States. In August 2004, the United States requested India to permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. On April 25, 2018, India's MAFW confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas indefinitely until both parties come to an agreement on the U.S. systems-based approach.

SUBSIDIES

Export Subsidies

The Indian government's Foreign Trade Policy (FTP) 2015-2020 announced on April 1, 2015 is primarily focused on increasing India's exports of goods and services to raise India's share in world exports from 2 percent to 3.5 percent. The FTP consolidated most of India's existing export subsidies and other incentives into two main export incentive schemes: the Merchandise Exports from India Scheme (MEIS), and the Service Exports Incentive Scheme (SEIS). Under MEIS, exports of notified goods and products to notified markets as listed in Appendix 3B of Handbook of Procedures, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified rate (2 percent to 5 percent). MEIS provides export subsidies for a wide range of goods, including agricultural products, including certain dairy products, which also receive export subsidy support through state governments. Service providers of notified services as per Appendix 3E are eligible for freely transferable duty credit scrip at five percent of net foreign exchange earned. In addition, there are Duty Exemption & Remission Schemes; Export Promotion Capital Goods (EPCG) Scheme; Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme.

India maintains several export subsidy programs, including exemptions from taxes for certain export-oriented enterprises and for exporters in Special Economic Zones. Numerous sectors (*e.g.*, textiles and apparel, steel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but it has also extended or expanded such programs and even implemented new export subsidy programs. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures. In July 2016, India announced subsidies intended to encourage employment generation in the garment sector in addition to providing refunds for state levies. In 2017, India graduated from Annex 7 in the WTO, which mandates elimination of all export subsidies. In March 2018, the United States requested consultations on India's export subsidy schemes in the WTO and a formal panel was established on July 24, 2018.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers but also to stabilize prices through open market sales. India uses export subsidies to reduce stocks and has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. For example, the government authorized the exportation of 6.5 million tons of wheat from government-held stocks during August 2012 to May 2014 at varying minimum export prices significantly below the government's acquisition cost of $306 per ton, plus storage, handling, inland transportation cost, and other charges for exports. In February 2014, the Indian Cabinet Committee on Economic Affairs made four million metric tons (MMT) of raw sugar eligible to receive export subsidies under a new, two-year subsidy program, which lapsed in September 2015. The United States, along with other interested Member countries, has raised this issue in the WTO Committee on Agriculture. Later in September 2015, the Indian government introduced the Minimum Indicative Export Quota (MIEQ) program to sell four MMT sugar, which ran through June 2016. In March 2018, the Indian government re-introduced the MIEQ program to sell two MMT of sugar through September 2018. However, citing poor export sales, the program was extended by three months to December 2018 to meet the two MMT target.

In December 2017, India released a mid-term review of its FTP and outlined a renewed focus on promoting Indian exports while highlighting the need to move away from export subsidies consistent with WTO commitments relating to gross national income levels. As a result, India's revised FTP will now focus as well on reducing the cost of trade internal to the country, and has set forth an agenda to address trade facilitation issues impacting Indian exporters.

Agriculture Subsidies

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waiver, crop insurance, and subsidies for inputs, such as fertilizer, fuel, electricity, and seeds at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) scheme, which helps ensure minimum prices received by farmers. Rice and wheat account for the largest share of products procured by the government and distributed through India's public distribution system. However, in crop year 2014/2015, the Indian government purchased 1.5 million tons (8.695 million 170 kg bales) of cotton through announced minimum support price operations, at a cost of nearly $3 billion. The government's announcement of these MSPs can have the effect of providing a subsidy to the entire crop and distorting market prices and planting decisions. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" to the MSPs announced by the central government. Moreover, in certain years, some of the subsidized crop procured under MSP operations has been exported through private sector merchants and traders. Such high guaranteed MSPs, and extensive government procurement, can distort domestic market prices and incentivize over production, which restricts demand for imports and distorts international markets. Due to upcoming parliamentary elections in 2019, the Indian government and various state governments are likely to undertake higher levels of MSP procurement for various crops besides rice and wheat.

On May 4, 2018, the United States submitted the first ever counter notification (CN) to the WTO highlighting India's underreporting of its market price support (MPS) for rice and wheat covering marketing year 2010/11 to 2013/14, based on publicly available information. The CN estimated MPS well above India's *de minimis* WTO commitment of 10 percent below total volume of production. Subsequently, on November 9, 2018, the United States submitted a CN on India's MPS for cotton covering marketing years 2010/11 to 2016/17 estimating MPS for cotton in various years ranging between 53 and 81 percent – well above India's WTO commitment 10 percent *de minimis* of the total value of production. In addition, Australia submitted a CN on India's MPS for sugarcane covering marketing years 2011/12 to 2016/17 on November 16, 2018. Australia's CN estimates India's MPS for sugarcane ranges from 78 percent to 100 percent without taking into account substantial state support also administered by several states.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. Multiple procurement rules, guidelines, and procedures issued by multiple bodies have resulted in problems with transparency, accountability, competition, and efficiency in public procurement. A recent World Bank report stated that there are over 150 different contract formats used by the state owned Public Sector Undertakings, each with different qualification criteria, selection processes, and financial requirements. The government also provides preferences to Indian micro, small, and medium enterprises and to state owned enterprises. Moreover, in defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian produced parts, equipment, or services, a requirement that continues to prove challenging for manufacturers of high-technology equipment.

In March 2016, the Indian Ministry of Defence announced a new Defense Procurement Procedure that increased the offset threshold for mandatory local content to 20 billion Indian rupees (approximately $300 million) for defense industry companies contracting with the Indian government, and also increased indigenous content requirements, although flexibility may exist for certain projects. In May 2017, the Indian Cabinet approved a public procurement policy to give preference to domestically manufactured goods with a view to promote the "Make in India" initiative. The move is aimed at facilitating local manufacturing and boosting domestic demand for locally manufactured products. As part of this May 2017 policy, the Ministry of Defence approved a model for Strategic Partnerships in certain acquisition programs, although the strong focus on mandatory technology transfer has given many U.S. companies reason to exercise caution regarding participation. A local content requirement has also been extended to the procurement of medical devices, and several government tenders in the last year have included a 30 percent local content mandate.

India's National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information communications technology and clean energy). Consistent with this approach, India issued the Preferential Market Access notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. Subsequently, in June 2017, the Department of Industry Policy & Promotion (DIPP) issued two notifications under the Public Procurement "Preferential Electronics Order" and "Cyber Notification" to State Governments and Central Agencies mandating preferences for domestically manufactured electronic goods, which include hardware, for the purpose of government procurement as well as more recently, cyber security software products. The notification indicates that this requirement will apply to procurement by government, government companies, and other procuring entities. This notification is the culmination of similar Indian policy proposals over the past year that have outlined discriminatory government procurement policies as a means to stimulate domestic manufacturing of electronics and telecommunications equipment at the expense of foreign companies that have invested heavily in India.

India is an observer to the WTO Committee on Government Procurement but is not a signatory to the WTO Government Procurement Agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2018 Special 301 Report due to concerns over weak protection and enforcement of intellectual property rights (IPR). Through the Working Group on

Intellectual Property under the TPF, the United States and India held regular dialogues in 2018 on the range of IPR challenges facing U.S. companies in India with the intention of creating stronger IPR protection and enforcement in India.

Developments over the past year include India's continued efforts to reduce delays and backlogs of patent and trademark applications, the Cell for IPR Promotion and Management's (CIPAM) promotion of IP awareness and commercialization throughout India, and ongoing efforts to improve IP enforcement, particularly at the state-level.

In the field of copyright, procedural hurdles, problematic policies, and effective enforcement remain concerns. In December 2018, India released for public comment the Cinematograph Act (Amendment) Bill, which contained anti-camcording legislation. The Bill currently awaits parliament approval. In April 2017, India announced that its Copyright Board would merge with the Intellectual Property Appellate Board (IPAB), and that both boards will have one chairman. In January 2018, the new chairman was appointed and trademark-related matters are being heard on a fast track. However, due to the IPAB's lack of technical experts, patent and copyright matters remain stalled. The lack of a functional copyright board has so far created uncertainty regarding how IP royalties are to be collected and distributed. Until a new copyright technical member is appointed, the copyright board will continue to be non-functional. In addition, the expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly-broad exceptions for certain uses continue to raise concerns about the strength of copyright protection and complicate the market for music licensing.

In the area of patents, there are a number of factors that negatively affect stakeholders' perception of India's overall IPR regime, investment climate, and innovation goals. While certain administrative decisions in 2017 upheld patent rights, and certain tools and remedies do exist in India to support rights of patent holder, concerns remain over revocations and other challenges to patents, particularly patents for agriculture technology and pharmaceutical products. The United States also continues to monitor India's application of its compulsory licensing law. Moreover, in 2013, the Indian Supreme Court stated that India's Patent Law created a second tier of requirements for patenting certain technologies, such as pharmaceuticals, an interpretation that may have the effect of limiting the patentability of an array of potentially beneficial innovations. In recent years, India governmental policies and court rulings have raised serious concerns over India's innovative environment for agricultural technologies. In particular, draft guidelines on genetically-modified technologies provide for mandatory licensing with overly prescriptive terms that, if implemented, would undermine market incentives critical to the agricultural biotechnology and other innovative sectors and, certain 2018 court rulings raise questions over the patentability in India on these important technologies. India has been an accessing office for the WIPO Centralized Access to Search and Examination (CASE) system. In 2018, it became WIPO Digital Access Service (DAS) participating office and began providing its own documentation for the CASE system, all of which aid patent examination in India and other participating national and regional offices.

Enforcement of IP rights remains a critical concern in India. While the IP Crime Units in Maharashtra and Telangana continue to conduct meaningful enforcement activities, this stands in stark contrast to activities in other states and India still lacks enforcement at the federal level.

India currently lacks an effective system for protecting against unfair commercial use, as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural products. The U.S. Government and stakeholders have also raised concerns with respect to allegedly infringing pharmaceuticals being marketed without advance notice or opportunity for parties to resolve their IPR disputes.

With respect to trade secrets, U.S. and Indian companies have expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of standalone trade secrets legislation. India's 2016 National IPR Policy called for trade secrets to serve as an "important area of study for future policy development" but India has not yet prioritized or embarked upon this work.

SERVICES BARRIERS

The Indian government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted and, in the case of legal services, is prohibited entirely.

Insurance Services

Under India's Insurance Laws (Amendment) Act, 2015, foreign investment in Indian insurance companies is capped at 49 percent. The law further requires that all insurance companies be Indian "controlled." The Insurance Regulatory and Development Authority of India (IRDAI) has promulgated guidelines (October 19, 2015) on this "Indian control" requirement. The guidelines include: (1) a mandatory requirement that a majority of directors be nominated by Indian investors; (2) limitations on the rights of foreign-nominated board members; (3) requirements for how "key management persons" are to be appointed; and (4) requirements on the manner in which control over "significant policies" of the enterprise must be exercised. Foreign investors have expressed concern that the requirements create a rigid structure that ignores operational realities and will dilute the rights of foreign investors in Indian insurance companies, making additional FDI in the sector unattractive.

In December 2015, the IRDAI issued a revision to its regulations governing the provision of reinsurance services in India that affords Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the business for which foreign reinsurers can compete and decreases the interest of foreign reinsurers in establishing branches in India, resulting in negative impacts to the supply and cost of reinsurance services in the Indian market. In December 2018, IRDAI reaffirmed that the state-owned General Insurance Corporation (GIC) of India maintained the right of first refusal for all reinsurance contracts.

In October 2016, IRDAI circulated a discussion paper that called for the compulsory public listing of life insurers that have been in operation in India for seven years or more. Such a requirement to publicly list is rare, and companies generally decide whether to undertake an initial public offering based on an analysis of company-specific facts. IRDAI finally reversed its stance after strong resistance by insurance companies. In March 2017, the IRDAI Chairman made it clear that for the time being, it will not be compulsory for insurance companies to be publicly listed. However, he did not rule out the introduction of such a provision at some later stage.

Financial Services

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most banks are Indian-owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered by non-transparent limitations on branch office expansion.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than five percent of an Indian private bank without approval by the Reserve Bank of India (RBI). Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent.

Audiovisual Services

U.S. companies have reported that India's satellite programming downlinking policy is overly burdensome, including the requirement for foreign programmers to establish a registered office in India or designate a local agent. Programmers must also prove that they have a net worth of 50 million rupees (approximately $800,000) in order to downlink one content channel, and an additional 25 million rupees (approximately $400,000) of net worth for each additional channel.

The Telecommunications Regulatory Authority of India's regulations on content aggregation and distribution do not allow bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled into and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties particularly for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters that they seek to target.

There are also a number of limits on foreign ownership in the audiovisual and media sectors: cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and newspapers (26 percent).

Professional Services

Legal Services

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory "to practice law" in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign law and diverse international legal issues. The United States and India are continuing to discuss liberalization of legal services under the TPF.

Accounting Services

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Architecture Services

Although Indian companies continue to demand high-quality U.S. design for new buildings and infrastructure development, foreign architecture firms find it difficult to do business in India due to the legal environment. Court cases against foreign design firms seeking to perform work in India and harassment of their potential clients creates uncertainty for U.S. providers of architectural and related services, causing significant losses for those companies.

Telecommunications Services

Barriers to Entry

In 2013, India eliminated a 74 percent cap on FDI in Indian wireless and fixed telecommunications providers, though government approval is required for FDI above 49 percent. U.S. companies note that India's one-time licensing fee for telecommunications providers (approximately $500,000 for a service-specific license or $2.7 million for an all-India Universal License) serves as a barrier to market entry for smaller companies. The government of India continues to hold equity in multiple telecommunications firms. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was set aside for Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL), state-owned telecommunications service providers in India, instead of being allocated through competitive bidding. Although it does not appear that MTNL and BSNL paid a preferential price, they did receive their spectrum allocation well ahead of privately owned firms.

Remote Access Policy

Global telecommunications operators have made significant investments in establishing India's network infrastructure. However, policies pertaining to remote access (RA) to their networks for network operators negatively impact network security and compliance and hamper telecommunications services suppliers' ability to efficiently operate networks in India. Telecom operators are required under their license to obtain pre-approval to remotely configure and operate their networks. Delayed RA approvals leave networks vulnerable to cyber-attacks. India should utilize international standards for security in lieu of the strict RA policy, and should move to an "information filing" process, replacing the "pre-approval process."

Satellite Services

India's Ministry of Information and Broadcasting (MIB) has issued guidelines that establish a preference for Indian satellites to provide capacity for delivery of Direct-to-Home (DTH) subscription television services. In practice, authorized DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural and contracting delays when they have sought to do so. Rather, DTH licensees must procure foreign satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits such procurements if it does not have available capacity on its own system. This issue is compounded by a lack of transparency regarding ISRO's plans for future transponder capacity. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which, in turn, resells the capacity to the end-user with a surcharge.

Foreign satellite operators are thus prevented from developing direct relationships with DTH licensees. This is a particular concern to the United States, as it puts U.S. satellite operators at a competitive disadvantage, promotes market uncertainty, and prevents DTH licensees from offering a fuller range of services from U.S. satellites. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

India also imposes onerous licensing requirements on foreign satellite-based personal communications services. Licenses require high application fees and bank guarantees as well as prohibitively expensive capitalization requirements. Further, licensees must construct local ground station facilities before offering service. In addition, the use of any kind of satellite phone in India requires a license, and the use of foreign satellite phones in Indian waters is prohibited entirely. Together, these requirements make it economically unfeasible for many foreign satellite communications providers to offer services in India.

Distribution Services

India permits 100 percent FDI in single brand retail. Foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized enterprises. In June 2016, the Indian government relaxed these sourcing requirements for companies engaged in the distribution of 'state-of-art' and 'cutting-edge' technology: firms would have three years from the opening of a single-brand retail outlet to meet the 30 percent requirement as long as the initial 5 year average was 30 percent. In January 2018, India further relaxed the requirement, allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains during the first 5 years the investment. Despite these modifications, the local content requirements remain prohibitive.

India permits up to 51 percent foreign ownership in companies in the multi-brand retail sector, but leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately $100 million, at least 50 percent of which must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehouses); (2) a requirement to operate only in cities that have been identified by the relevant state government; and (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises that have a total investment in plant and machinery not exceeding $2 million. Several foreign companies have reported that the local sourcing requirements and other conditions on foreign investment have diminished the commercial incentive for expanding investment in India's retail sector.

India allows for 100 percent FDI in business-to-business (B2B) electronic commerce, but prohibits foreign investment in business-to-consumer (B2C) electronic commerce. India also does not allow foreign-owned e-commerce firms to take ownership of inventory that requires them to operate, as a marketplace-based electronic retailing model. In December 2018, India announced new regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based e-commerce sites from selling products on their parent companies' sites. The new rules also prohibit exclusivity arrangements by which e-commerce retailers can contract to offer any product on an exclusive basis. The only exception allowing FDI in B2C electronic commerce permits investment in single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of most potential e-commerce investors to access the Indian market.

Indian states have periodically challenged the activity of direct selling (*i.e.*, the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in this sector. This central government legislation contains no clear distinction between fraudulent activities and legitimate direct-selling operations. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act, including the arrest of a chief operating officer of a direct selling company.

Previously, stakeholders asked India to issue guidance establishing a definition of direct selling and clarifying ambiguities, including uncertainty related to commissions earned in connection with the sale of products. In 2016, after extensive advocacy by the U.S. government and private industry, India approved new guidelines governing direct selling that established clear legal definitions of direct selling, but enforcement and application of the new guidelines is still left to state authorities.

Education

Foreign suppliers of higher education services interested in establishing a presence in India face a number of barriers, including: a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research.

In June 2016, India's former planning commission, NITI Aayog, submitted its report to the Prime Minister's Office (PMO) and the Human Resource Development (HRD) Ministry calling for the invitation of foreign universities to set up campuses in India. The report suggested that foreign education providers be allowed entry into the country via three possible regimes: (1) operation of foreign universities in the country should be regulated by law; (2) the University Grants Commission (UGC) Act of 1956 should be amended along with the relevant regulations on universities, to allow foreign universities to be deemed universities; and (3) to facilitate joint ventures between Indian and foreign institutions, the UGC and the All India Council for Technical Education (AICTE) regulations should be modified to add viable co-beneficial arrangements and twinning programs. However, no action has been taken to date with respect to the report's recommendations.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

India has recently promulgated a number of data localization requirements that would serve as significant barriers to digital trade between the United States and India. These requirements raise costs for suppliers of data-intensive services by forcing the construction of unnecessary, redundant data centers and prevent local firms from taking advantage of the best global services available.

In October 2018, the Reserve Bank of India (RBI) implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule in April without advance notice and without input from stakeholders. Requiring local storage of all payment information raises costs for payment service suppliers, and disadvantages foreign firms, which are more likely to be dependent on globally distributed data storage and information security systems. Furthermore, an only-in-India data storage requirement will hamper the ability of service suppliers to detect fraud and ensure the security of their networks.

In July 2018, the Indian government published a draft Personal Data Protection Bill. If passed into law, the bill would impose onerous burdens on firms, especially foreign firms, that process personal information. Most concerning is a data localization requirement: firms would be required to store a copy of all personal information related to Indian persons on a server located in India, and an as-yet-undefined category of "critical" personal information could not be transferred out of India under any circumstances. These data localization provisions would damage the digital economy without supporting privacy. Additionally, the bill would authorize immense fines and criminal penalties in response to data breaches. The U.S. Government submitted comments on the draft bill to India in September.

India's 2015 National Telecom M2M (machine to machine) Roadmap (Roadmap) would require all M2M gateways and application servers serving customers in India to be located within India. The Roadmap also recommends that foreign subscriber identification modules (SIMs) be permitted in devices to be used in India only if they fulfill traceability criteria and that machines sold and manufactured in India should only be equipped with SIMs of Indian telecommunications providers. The Roadmap has not been implemented but continues to create uncertainty related to India's policy environment for digital services.

India is currently developing a new electronic commerce policy, early drafts of which have contemplated broad-based data localization requirements and restrictions on cross-border data flows, expanded grounds for forced transfer of intellectual property and proprietary source code, preferential treatment for domestic digital products, and other discriminatory policies. The United States strongly encourages India to reconsider the most discriminatory and trade-distortive aspects of this draft policy and the other measures described above.

Technology

Indian Internet providers must obtain government approval from the Telecom Regulation Authority of India (TRAI) to employ encryption stronger than 40-bit encryption. This requirement continues to create regulatory uncertainty for digital service providers seeking to use strong encryption. Most other countries allow the use of strong encryption standards to ensure the security of sensitive information. India is currently drafting a new encryption policy that should address these issues and avoid creating new and overly prescriptive requirements for how businesses protect data.

Draft regulations announced in late 2018 (the "Information Technology (Intermediary Guidelines) Rules 2018"), would require companies providing encrypted communications services to enable "traceability" of such communications, potentially undermining services that depend on end-to-end encryption to provide privacy and security.

Cloud computing services face a number of barriers when providing services in India. Service suppliers are unable to buy dark fiber needed to build new networks, prohibited from purchasing dual-use equipment needed to run networks, and unable to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point. These restrictions impact the ability of cloud services to effectively manage their own networks. In 2018, a cloud policy panel recommended that India mandate that all data generated in India by tech and cloud computing companies would be required to be stored within the country. Such a requirement would raise the same concerns as other data localization requirements described above.

Internet Services

The absence of a safe harbor framework for Internet intermediaries discourages investment in Internet services that depend on user-generated content. India's 2011 Information Technology Rules have provided an insufficient shield for online intermediaries from liability for third-party user content: any citizen can complain that certain content is "disparaging" or "harmful," and intermediaries must respond by removing that content within 36 hours. Draft regulations announced in late 2018 (the "Information Technology (Intermediary Guidelines) Rules 2018"), threaten to further worsen India's intermediary liability protections. These draft rules would require platforms to become proactive arbiters of "unlawful" content, shifting the onus of the state to private parties. If these draft rules come into force, they will incentivize overly restrictive approaches to policing user-generated content, and will undermine many Internet-based platform services.

In 2017, India began assessing a 6 percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service providers and non-resident service providers. However, its provisions do not provide credit for tax paid in other countries for the service provided in India. Further, this levy has resulted in taxes on business income even when a foreign resident does not have a permanent establishment in India or when underlying activities are not carried out in India. The current structure of the equalization levy represents a shift from internationally accepted principles, which provide that digital taxation mechanisms should be developed on a multilateral basis in order to prevent double taxation. This levy may impede foreign trade and increase the risk of retaliation from other countries where Indian companies are doing business.

OTHER BARRIERS

Local Content Requirements

In 2010, India initiated the Jawaharlal Nehru National Solar Mission (JNNSM), which currently aims to bring 100,000 megawatts of solar-based power generation online by 2022, as well as promote solar module manufacturing in India. Under the JNNSM, India imposes certain local content requirements (LCRs) for solar cells and modules and requires participating solar power developers to use solar cells and modules made in India in order to enter into long-term power supply contracts and receive other benefits from the Indian government.

The United States challenged these LCRs through the WTO dispute settlement system. In February 2016, a WTO panel found India's LCRs inconsistent with multiple WTO requirements. These findings were affirmed by the Appellate Body on September 16, 2016, and the DSB adopted the Appellate Body and Panel reports at a special meeting of the DSB on October 14, 2016. On December 19, 2017, the United States requested authorization from the DSB to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" that the parties agreed to. The United States' request was referred to arbitration. On January 23, 2018, India requested the establishment of a compliance panel, asserting that it had complied with the DSB recommendations. The arbitration and compliance panel proceedings are ongoing.

Export Duties

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 percent and 15 percent, respectively, to 20 percent on both, and further increased the export duty to 30 percent in January 2012. A 5 percent *ad valorem* export duty on iron ore pellets has been in place since January 2014. Iron ore containing less than 58 percent iron has also been subject to a 10 percent export duty since May 2015. In March 2016, the government of India unified the rate of export duty for all types of iron ore (other than pellets) at 20 percent. These various export duties impact international markets for raw materials used in steel production.

In addition to the steel-related export duties, India's March 2017 budget also imposed a 15 percent duty on exports of aluminum ores, including laterite. India has also maintained, since February 2012, a 30 percent *ad valorem* duty on exports of chromium ore.

Transparency

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. In February 2014, India's Ministry of Law and Justice issued a policy on pre-legislative consultation, which was to be applied by all Ministries and Departments of the central government before any legislative proposal was to be submitted to the Cabinet for its consideration and approval. The policy also required central government entities to publish draft legislation or a summary of information concerning the proposed legislation for a minimum period of 30 days. Issuance through electronic media was also encouraged in the policy, as were public consultations. However, despite U.S. requests, the Indian government has provided no information on the implementation of the policy, other than to clarify it is only intended to apply to draft legislation, not regulations or tariff-setting.

In addition, in May 2016 the Indian Supreme Court made a judgement concerning the Telecom Regulatory Authority of India in which it recommended that India's Parliament "frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions." U.S. stakeholders continue to report new requirements that are issued with inadequate public notice and comment periods and/or consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, negatively affecting the ability of U.S. companies to enter or operate in that market and inhibiting India's overall business environment. The United States continues to raise concerns regarding uniform notice and comment procedures with the government of India, both bilaterally in the TPF and multilaterally in the WTO and other fora.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $12.6 billion in 2018, a 5.3 percent decrease ($702 million) over 2017. U.S. goods exports to Indonesia were $8.2 billion, up 19.8 percent ($1.4 billion) from the previous year. Corresponding U.S. imports from Indonesia were $20.9 billion, up 3.3 percent. Indonesia was the United States' 34th largest goods export market in 2018.

U.S. exports of services to Indonesia were an estimated $2.7 billion in 2017 (latest data available) and U.S. imports were $1.1 billion. Sales of services in Indonesia by majority U.S.-owned affiliates were $2.9 billion in 2016 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $115 million.

U.S. foreign direct investment (FDI) in Indonesia (stock) was $15.2 billion in 2017 (latest data available), a 1.5 percent increase from 2016. U.S. direct investment in Indonesia is led by mining, nonbank holding companies, and manufacturing.

OVERVIEW

The number and severity of Indonesian trade and investment barriers continue to present significant uncertainties and risks for U.S. exporters and companies doing business in Indonesia. A host of restrictions including import licensing procedures and permit requirements, product labeling requirements, local content and domestic manufacturing requirements, and quantitative import restrictions continue to impede U.S. exports. In addition, the Indonesian government has adopted measures that restrict imports as it pursues the objective of agricultural self-sufficiency. Beginning in late 2015, the Indonesian government has introduced a series of economic reform packages designed to ease regulatory burdens, improve the business climate, and attract additional investment, including the most recent package in late 2018. To date, the effect of these reforms has been limited because of their narrow scope and slow implementation.

TRADE AGREEMENTS

Indonesia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Indonesia, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Indonesia and the other ASEAN countries signed a free trade agreement (FTA) with Hong Kong, but it is not yet in force. Indonesia has signed bilateral FTAs with Australia and Chile, as well as with Iceland, Liechtenstein, Norway, and Switzerland under the European Free Trade Association, but none of these FTAs are yet in force. Indonesia is negotiating other FTAs with the European Union, India, Korea, Mozambique, Tunisia, and Turkey. Indonesia is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Indonesia's Most Favored Nation (MFN) applied tariff rate averaged 8.1 percent in 2017 (latest data available). Indonesia periodically changes its applied rates and over the last ten years has increased its applied tariff rates for a range of goods that compete with locally-manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Indonesia's simple average WTO bound tariff rate of 37.1 percent is much higher than its average applied tariff. Most Indonesian tariffs on non-agricultural goods are bound at 35.6 percent, although tariff rates exceed 35.6 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 35.6 percent. Under Minister of Finance (MOF) Regulation 182/2016, Indonesia levies an import duty of 7.5 percent on certain goods (known as "consignment goods") imported by businesses regardless of the tariff rate in Indonesia's WTO and FTA schedules, if the Free On Board (FOB) customs value of the good is more than $100 but less than $1,500.

Taxes

In September 2018, Indonesia issued MOF Regulation 110/2018, increasing the "withholding tax" rates for 1,147 imported products, including from: 1) 2.5 percent to 7.5 percent for 719 consumer goods (*e.g.*, audio-visual equipment, textiles); 2) 2.5 percent to 7.2 percent for 218 daily necessities (*e.g.*, shampoos, cosmetics); and 3) 7.5 percent to 10 percent on 210 luxury goods. The stated objective for this policy was to decrease Indonesia's current account deficit by reducing imports of these goods.

Luxury goods, imported or locally produced, may be subject to a luxury tax of up to 200 percent. However, there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 75 percent. Imported passenger vehicles with an engine displacement over three liters or motorcycles with an engine displacement over 500 cc are currently subject to a 125 percent luxury tax. The combined effect of this luxury tax, a maximum of 50 percent tariff, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia's highways severely restricts U.S. motorcycle exports to Indonesia. MOF Regulation 35/2017 revised the type of goods classified as "luxuries" subject to the sales tax on luxury goods. Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. Excise tax rates are 150 percent on spirits and 90 percent on wine.

Nontariff Barriers

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede market access. Under Minister of Trade (MOT) Regulation 70/2015, all importers must obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. In response to stakeholder concerns, MOT issued Regulation 118/2015, which allows companies that operate under an API-P import license to import finished products for market testing, after sales service purposes, or for "completing a product line," as long as the goods are new, consistent with the company's business license, and meet import requirements. In 2018, MOT issued Regulation 75/2018, further amending MOT Regulation 70/2015, and requiring importers to obtain a business identification number and register on the

Online Single Submission, a single window system for business license issuance.

MOT Regulation 87/2015 on the Import of Certain Products requires pre-shipment verification on a broad range of products (including electronics, textiles and footwear, toys, food and beverage products, and cosmetics) by designated companies (known in Indonesia as "surveyors"). The verifications come at the importer's expense and impede the entry of imports to designated ports and airports. In addition, Regulation 87/2015 appears to maintain certain non-automatic import licensing requirements.

Under MOT Regulation 82/2012 (last amended by MOT Regulation 41/2016) and MOI Regulation 108/2012, Indonesia imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*See the Services Barriers section below for further information.*)

Import Licensing for Agricultural Products

Since at least 2012, Indonesia has maintained unjustified and trade-restrictive licensing regimes for the importation of horticultural products, animals, and animal products. Indonesia has amended its import licensing regimes several times, adding additional trade-restrictive requirements. Because Indonesia repeatedly failed to address U.S. concerns, in 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on 18 out of 18 claims and finding that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On November 9, 2017, the WTO Appellate Body rejected Indonesia's appeal and upheld the panel's findings that each of the challenged measures is WTO-inconsistent. On August 2, 2018, the United States requested authorization from the WTO to take countermeasures. On August 14, 2018, Indonesia objected to the U.S. request, referring the matter to arbitration. That arbitration is pending.

Dairy Nontariff Measures

In 2017, MOA issued Regulation 26/2017, which required that local milk processors and importers procure local milk, promote local dairy products, and/or invest in the local dairy sector. In January 2018, MOA began implementing Regulation 26/2017, sending letters to domestic processors and importers, requiring that they submit "partnership proposals" by February 15, 2018. However, in July 2018, MOA issued two regulations (Regulations 30/2018 and 33/2018) rescinding the partnership requirement and removing it as a condition for obtaining import permits. In addition, the July amendments deleted mandatory reporting requirements, removed sanctions associated with non-compliance, and deleted the clause stating that dairy processors must establish within three years their own plants that procure only local milk. The United States will continue to monitor Indonesia's implementation of Regulations 30/2018 and 33/2018 to ensure that MOA does not informally enforce partnership requirements.

Pharmaceutical Market Access

The pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement within the Indonesian pricing and reimbursement system. In particular, stakeholders report a lack of clarity and certainty regarding how pharmaceutical products are selected for listing on the Indonesian National Formulary, how price caps are determined, and whether and for how long such products will remain on the formulary. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) have regular meetings with U.S. stakeholders to discuss these issues.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. In 2018, MOI produced a draft regulation that would implement Presidential

Instruction 6/2016, on Acceleration of the Development of Pharmaceutical and Medical Device Industries, and establish a detailed local content calculation methodology for pharmaceutical products sold in Indonesia. The draft regulation defines local content in pharmaceutical product as including manufacturing, raw ingredients, research and development, and packaging. Although the minimum local content level is still undefined, MOI officials have said publicly that they are considering a 20 percent minimum local content for pharmaceutical products. In addition, MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industry prioritize the utilization of domestic raw materials. Businesses are concerned that the calculation of local content will be a requirement to be able to participate in the national social security system (JKN) procurement or e-catalogue system.

Additionally, MOH Decree 1010/2008 requires foreign pharmaceutical companies either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals on its behalf. Among its requirements, Decree 1010/2008 mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration and contains a technology transfer requirement. A subsequent pair of regulations, MOH Regulation 1799/2010 and an updated regulation on drug registration from BPOM, most recently revised in Regulation 16/2015, provide additional information about the application of the local manufacturing requirements.

Quantitative Restrictions

Indonesia imposes restrictions on feed corn imports, limiting the right to import to the state-owned procurement body, the Bureau of Logistics (BULOG). However, some corn imports intended for starch manufacturing are allowed. As Indonesia’s sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Other feed millers are obligated to use locally produced feed corn, but have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry’s growth. In November 2018, MOA authorized BULOG to import 100,000 tons of corn for poultry producers.

Indonesia bans salt imports during the domestic agricultural harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by MOT.

Product Testing

BPOM sets out requirements for testing of heavy metals in food, drugs, and cosmetics in its Regulation 17/2014. BPOM Regulation 12/2015 provides further guidance on these requirements, which is fulfilled through a certificate of analysis. A 2016 BPOM circular letter extended a certificate’s validity from six months to one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the certificate. This measure appears intended to limit imports and adds unnecessary costs. In addition, in the case of cosmetics, U.S. and other stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the ASEAN Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

Customs Barriers and Trade Facilitation

U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using transaction values as required by the WTO Customs Valuation Agreement. Indonesia's Director General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

On December 5, 2017, Indonesia ratified the WTO Trade Facilitation Agreement (TFA) and availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Indonesia notified all four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

State Trading

BULOG maintains exclusive authority to import standard unbroken rice (medium grain, medium quality). Indonesia cited "food security" and price management considerations as the principal objectives of the authorization, but the Indonesian government separately cited its aspirations for food self-sufficiency. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017 and 58/2018, the Indonesian government sets farmer level and consumer level reference prices for rice, corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other SOEs can intervene in the market when prices surpass or are below threshold targets. In practice, BULOG's market operations are primarily done in the rice sector. Several times in 2018, BULOG sold rice from its stock to dampen high domestic rice prices with the Coordinating Ministry for Economic Affairs authorizing BULOG to import 1.8 million tons of rice. In 2018, BULOG also imported about 80,000 tons of low-priced Indian buffalo meat, which was sold at set prices for low-income consumers. This action was particularly important in keeping a lid on beef prices during the peak demand time of Ramadhan. MOT changed the retail reference price for rice twice in 2017, leading to confusion and market distortions. MOT also maintains reference prices for rice, corn, soybeans, sugar, shallots, beef, farm-raised chicken, chicken eggs, and cooking oil.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards and Testing Requirements

Ministry of Industry (MOI) Regulation 24/2013 (as revised by MOI Regulations 55/2013 and 111/2015) requires a mutual recognition agreement for the acceptance of test reports from laboratories outside of Indonesia. The United States is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory testing in Indonesia to obtain certification. U.S. stakeholders have expressed concern about the frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. However, in October 2018, MOI issued Regulation 29/2018, further amending Regulation 24/2013 and introducing an alternative scheme that allows importers to obtain a certification valid for four years through product testing and an audit of production processes. U.S. manufacturers remain concerned by the lack of clarity on how products can enter the market under the new scheme. The United States will continue to raise concerns over toy standards bilaterally and in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Halal Certification

In September 2014, Indonesia passed Law 33/2014 on Halal Product Assurance, which makes halal certification mandatory for food (including products derived through agricultural biotechnology), beverages, pharmaceuticals, cosmetics, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. In January 2019, Indonesia released a draft regulation that would make halal certification requirements effective on October 17, 2019, although enforcement of the requirements would not begin until October 17, 2024 for food and beverage products, and until October 17, 2026 for all other products. Indonesia has yet to issue or notify to the WTO this draft regulation or any other implementing regulations, and many details remain unclear.

Indonesia has also expressed the need for a Mutual Recognition Agreement (MRA) for recognition of foreign halal certificates, which would not be possible in the United States as there is no U.S. Government halal certification or accreditation body. In the meantime, Indonesia has instructed companies to follow existing Indonesia Ulema Council (MUI) halal-certification procedures. In 2018, MUI provided two-year extensions for five U.S. halal certifying bodies designated to issue certifications for meat and food exports to Indonesia.

In October 2017, the Indonesian government officially established the Halal Product Assurance Agency (BPJPH) under the Ministry of Religious Affairs (MORA). MORA is developing government regulations on halal product assurance and the fees to be charged for halal certification. The United States will continue to monitor developments and continue to engage with Indonesia on these issues, including in the WTO TBT Committee.

Label and Advertisement of Food Regulation

In 2016, Indonesia's food and drug regulatory agency, the National Agency of Drug and Food Control ("BPOM"), released a draft Government Regulation on Food Labeling and Advertising, to implement provisions of Law 18/2012 on Food. Among other things, this draft regulation would prohibit advertising of milk products for children up to two years of age and prohibit functional claims on foods for children under three years of age. It is unclear when Indonesia intends to finalize this draft regulation. The United States has asked Indonesia to notify the measure to the WTO TBT Committee before finalizing.

Sanitary and Phytosanitary Barriers

Beef and Pork

Indonesia requires each U.S. meat establishment seeking to export to Indonesia to complete an extensive questionnaire that includes proprietary information, and to be inspected by Indonesian inspectors, before it can ship meat to Indonesia. The United States has raised concerns about this approval system with Indonesia repeatedly, including at the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) and in bilateral interactions, and will continue to raise concerns in WTO and bilateral fora. In 2016, Indonesia conducted an audit in the United States and approved 10 new meat plants to export. However, in 2017, Indonesia subjected all animal product establishments seeking to export to Indonesia to inspection fees.

Animal-Derived Products

Indonesia's animal health and husbandry law (Law 18/2009, as amended by Law 41/2014) requires companies that export animal-derived products, such as dairy and eggs, to Indonesia to complete a pre-registration process with the Ministry of Agriculture (MOA). The law allows imports of these products only from facilities that Indonesian authorities have individually approved. To date, Indonesia has not notified the law to the WTO SPS Committee. After a 2011 audit of the U.S. food safety system for dairy products, Indonesia agreed to a simplified questionnaire for U.S. dairy facilities seeking to pre-register for review and approval. The United States is continuing to work with Indonesia to further improve the system under which U.S. establishments become eligible to export dairy products to Indonesia.

Inspection Fees

In 2017, MOA began applying inspection fees on all animal product establishments seeking to export to Indonesia under Government Regulation 35/2016. These inspections are mandatory to obtain export eligibility certificates, and consist of a "desk audit" of application materials ($1,200), an on-site facility inspection ($925 per auditor, per day), and a post-audit desk review ($1,200). U.S. exporters must also pay for MOA officials' transport and lodging costs while conducting inspections in the United States. In total, companies seeking to export to Indonesia could pay up to $10,000 for an inspection.

Horticulture

MOA Regulation 55/2016 establishes requirements for countries wishing to export "Fresh Food of Plant Origin" to Indonesia. The regulation specifies that Indonesia must recognize either the food safety system of an exporting country or a registered food safety testing laboratory serving that country's exporters. In 2016, Indonesia recognized the U.S. food safety system under this regulation. In January 2018, Indonesia renewed this recognition for another two years. (*See the Customs Barriers section for more information*.)

SUBSIDIES

The United States remains concerned that Indonesia has not filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) since March 1998. The United States has met bilaterally with Indonesia to urge it to submit a WTO subsidies notification and to offer technical assistance in preparing such a notification. In response to questions regarding Indonesia's most recent WTO Trade Policy Review (TPR) in 2013, Indonesia indicated that it was pursuing support policies to, *inter alia*, improve export performance and develop downstream industries, but it provided few details regarding specific measures. According to the WTO Secretariat Report on the 2013 TPR, Indonesia provides fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, as well as assistance on land acquisition, licensing, investment, and labor. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. Indonesia is subject to the WTO prohibition of export subsidies under Article 3.1(a) of the Subsidies Agreement.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations 54/2010 and 38/2015 both require procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Presidential Regulation 38/2015 applies to infrastructure projects where the Indonesian government is the project manager, and the corresponding entities – whether SOEs, domestic companies, or foreign companies – do not receive state budget allocations or capital injections for infrastructure procurement. Presidential Regulation 54/2010 applies to projects where the government is the project manager and the corresponding entities receive state budget allocations. Both regulations provide general minimum requirements for local content and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements.

Indonesia's 2012 Defense Law and Presidential Decree 76/2014 mandate priority for local materials and components and require defense agencies to use locally produced goods and services whenever available. In addition, when an Indonesian government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for "trade balancing" offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof. The amount of local content required starts at 35 percent, and increases in 10 percent increments every five years until the value of local content is equal to 85 percent. Numerous details, including specifics for multiplier values, remain undetermined.

Indonesia is an observer to the WTO Committee on Government Procurement but not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Indonesia remained on the Priority Watch List in the 2018 Special 301 Report. While Indonesia has taken some positive steps in recent years, including implementation of copyright and trademark reforms and continued educational outreach to the Indonesian public to advance intellectual property rights (IPR) awareness, the United States remains concerned about gaps in Indonesia's laws relating to IPR protection and enforcement. Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) remain key concerns. Counterfeiting activity extends to products that present serious risks to human health and safety, such as pharmaceuticals. Lack of enforcement also remains a problem, and the United States continues to urge Indonesia to increase proactive interagency coordination and to provide for deterrent-level penalties for IPR infringement in physical markets and over the Internet. The United States also continues to encourage Indonesia to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products.

In addition, revisions to Indonesia's Patent Law in July 2016 have raised concerns, including with respect to: the patentability criteria for incremental innovations and computer-implemented inventions; the grounds and procedures for issuing compulsory licenses; disclosure requirements for inventions related to traditional knowledge and genetic resources; and requirements to disclose the details of private licensing agreements. The United States also remains concerned with local manufacturing and use requirements under the 2016 Patent Law. Although Ministry of Law and Human Rights (MLHR) Regulation 15/2018 provides for requests to postpone compliance with such requirements, the United States continues to encourage Indonesia to amend the 2016 Patent Law to eliminate this requirement entirely.

The United States remains highly concerned about countries negotiating product-specific intellectual property (IP) outcomes as a condition of market access from the EU, and reiterates the importance of each individual IP right being independently evaluated on its individual merit. The United States finalized a bilateral IPR work plan in 2018 to improve the protection and enforcement of intellectual property in Indonesia, and will continue to work with the Indonesian government to address deficiencies in IPR protection and enforcement and promote public education and outreach.

SERVICES BARRIERS

Professional Services

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the MLHR. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Audit and Accounting Services

A foreign public accounting firm must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Express Delivery

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports.

Distribution Services

Logistics services generally remain subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

Health Services

Indonesia's 2016 Negative Investment List caps foreign ownership in general hospitals, private specialist clinics, dental clinics, and specialized nursing services at 67 percent in all regions of Indonesia, except Manado and Makassar where foreign ownership is prohibited for these healthcare facilities. Foreign ownership is also prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities.

Financial Services

Generally, no single entity, foreign or Indonesian, may own more than 40 percent of an Indonesian bank. In certain cases, the Indonesian Financial Services Authority (OJK) may grant exceptions to this general rule. In addition, since 2015, a foreign investor may hold a majority stake in an Indonesian bank if the investor has obtained that ownership stake by acquiring and merging two small banks (defined as banks with capital of less than IDR 1 trillion (approximately $73 million) prior to the merger).

Since 2013, Indonesia's central bank, Bank Indonesia (BI) has restricted foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

Under BI Regulation 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent, but exempts existing investments that exceed this foreign equity limitation. OJK Regulation 77/POJK.01/2016 on peer-to-peer (P2P) lending companies introduces various guidelines, obligations, and restrictions relevant to P2P lending services, and the organization of P2P lending service providers. This regulation caps foreign ownership of P2P services at 85 percent and mandates data localization. Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreign investors, but cannot operate in Indonesia as a branch of a foreign entity.

BI Regulation 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to eventually be processed through NPG switching institutions located in Indonesia and licensed by BI, starting with domestic retail debit transactions in 2018. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, preventing wholly foreign-owned companies from supplying switching services, and prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit transactions. BI Regulation 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail credit and debit transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer. The United States continues to raise concerns with respect to these policies.

Insurance Services

The 2014 Insurance Law requires all insurance companies to incorporate locally and limits foreign investment in domestic insurance companies to the acquisition of publicly traded shares. Private equity purchases of company stock are not allowed, though the 2014 Insurance Law exempts joint ventures predating the law where foreign ownership was acquired through private equity means. The Insurance Law does not contain an explicit limitation on foreign equity ownership, but called for the MOF to issue such a regulation. In May 2018, Indonesia issued Government Regulation 14/2018 ("GR 14/2018") limiting foreign equity in insurance companies at 80 percent. GR 14/2018 exempts companies with foreign ownership higher than 80 percent at the time of the GR 14/2018's issuance, but limits these companies' foreign ownership to their May 2018 levels and requires new capital injections to comply with the 80 percent foreign/20 percent domestic ownership rule. Additionally, for these exempted companies, GR 14/2018 includes a "ratchet" provision that lowers the permitted level of foreign ownership if the percentage of foreign ownership falls.

OJK Regulation 14/2015 and OJK Circular Letter 31/2015 require insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for certain products (such as vehicle, accident, health, and life insurance). OJK also requires mandatory domestic cessions of up to 50 percent for other insurance lines, such as certain property and casualty policies. The United States has raised concerns over mandatory cession requirements for reinsurance and will continue to engage with Indonesia on this matter.

MOT Regulation 82/2017 requires exporters of coal and crude palm oil, importers of rice, and importers of items for government procurement to use Indonesian national shipping and insurance companies. Certain exporters and importers are granted a limited exception in the event that there is limited availability of Indonesian owned maritime transport or insurance companies. In July 2018, MOT issued Regulation 80/2018 postponing implementation of the domestic shipping requirement until May 1, 2020 and of the national insurance requirement until February 1, 2019.

Transport

Law 17/2010 on shipping requires all vessels operating in Indonesian waters to be Indonesian-flagged. In addition, it limits foreign ownership of any Indonesian-flagged vessel to 49 percent. However, the Indonesian shipbuilding industry does not have the capacity to build the variety of specialty ships its economy requires and is unlikely to have such capacity in the near to medium term. Full implementation of the law would be particularly problematic for foreign investors in Indonesia's energy and telecommunications sector, which would no longer be permitted to bring in the sophisticated rigs and specialized vessels needed to develop large upstream projects or service undersea cables.

Audiovisual Services

Indonesia's 2009 Law on Film imposes a 60 percent local content requirement for local exhibitors and grants authority to implement unspecified import restrictions, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films.

Construction, Architecture, and Engineering

Government Regulation 10/2014 permits a local construction firm to serve as subcontractor or advisor to a foreign construction firm, subject to several conditions, such as: 1) the Indonesian government determines that a local firm is not capable of managing an entire project on its own; 2) the foreign firm works with a 100 percent locally owned firm or in a joint venture with at least 65 percent local ownership; 3) the construction project is worth at least IDR 100 billion ($7.5 million) (or a minimum of IDR 20 billion, approximately $1.5 million, for a consultation project); 4) the project is considered "high-tech," such as by incorporating new technology that the local market cannot provide; and 5) the risk of project failure is high.

Beginning in 2015, the National Construction Services Development Board certifies foreign entities as construction companies, consulting companies, or integrated (engineering, procurement, and consulting) companies. A foreign entity may have only one of these designations.

Education

Indonesia limits foreign investment in primary, secondary, and tertiary educational institutions through issuance of special licenses. Foreign investment in non-formal education is limited to 49 percent. A foreign national may provide educational services at the tertiary level only if authorized by the Ministry of Education and Culture and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when no Indonesian instructors are capable of filling the position.

Franchising and Retail Distribution

Since 2012, MOT has made major regulatory changes in the franchising sector. MOT Regulation 53/2012 established a local content requirement obliging an Indonesian franchisee to source at least 80 percent of its equipment and inventory domestically, unless a waiver is granted. Also in 2012, MOT issued Regulation 68/2012 which requires modern retail franchisees, such as supermarkets, that own more than 150 units to sub-franchise additional units to another local entity. Under MOT Regulation 7/2013, food and beverage franchisees may own no more than 250 outlets. In 2014, MOT amended existing franchising requirements by issuing Regulations 57/2014 and 58/2014. These revised regulations grandfathered franchisors or franchisees of restaurants, cafés, and bars that already had more than 250 outlets.

Under MOT Regulation 70/2013, domestic products must account for at least 80 percent of the total amount and types of goods sold by modern retail establishments. Also under that regulation, private label products may account for a maximum of 15 percent of a modern retail establishment's inventory. In 2014, MOT issued Regulation 56/2014 providing an exception to the domestic product requirement for standalone brands or specialty stores selling products that meet any one the following criteria: 1) products requiring uniformity of production and sourcing from a global supply chain; 2) products with "world famous" or premium branding that are not yet produced in Indonesia; or 3) products from certain countries sold to meet the needs of their citizens living in Indonesia. Regulation 56/2014 provides an exception to the 15 percent maximum private label products cap to stores that have a local partner, and exempts modern stores with more than 150 outlets from the local partner requirement.

Telecommunications Services

Indonesia has issued a number of measures that make it more difficult to import cellular and Wi-Fi equipped products. Under MOT Regulation 82/2012, last amended by MOT Regulation 41/2016, importers of cell phones, handheld computers, and tablets are not permitted to sell directly to retailers or consumers. Additionally, importers are required to become a "registered importer," and must confirm that they are working with at least three distributors and provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms in order to qualify for an MOT import license.

U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally manufactured cell phones, handheld computers, and tablets. Companies seeking to import 4G-LTE enabled devices may only do so under a "producers license" (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, threatening to limit the ability of foreign producers to sell these devices in Indonesia. (See Import Licensing Requirements for further discussion of API-P requirements.) MOT Regulation 41/2016 also requires companies applying for an import license to submit product identification numbers and a certificate from the Ministry of Communications and Information Technology (MCIT).

Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation 68/2016, which requires importers to obtain an MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of "specialized items." Taken together, Indonesia's licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

Local Content Requirements

MCIT Regulation 27/2015 requires all 4G-LTE enabled devices to contain 30 percent local content, and all 4G-LTE base stations to contain 40 percent local content by January 2017. MOI Regulation 29/2017 provides a formula for counting "local content" and includes local manufacturing, development, software applications, and investment commitments as means to satisfy the requirement. Companies may satisfy the local content requirement by committing to build an "innovation center," invest at certain levels, and develop Indonesia's IT and communication industries. MOI Regulation 29/2017 also sets out a detailed monitoring system with multiple annual assessments. MCIT Circular Letter 518/2017 clarifies that MCIT Regulation 27/2015 applies only to products under the Harmonized System (HS) codes for base stations, cell phones, tablets, laptops, and Wi-Fi modems.

MCIT Regulations 7/2009 and 19/2011 require that equipment used in certain wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations and that all wireless equipment contains 50 percent local content. Indonesian telecommunication operators are also required, pursuant to MCIT Regulation 41/2009, to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services.

The United States continues to press Indonesia to remove these local content and investment requirements, which undermine opportunities for more rapid development of the Indonesian telecommunications sector.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

Data localization requirements remain a serious concern in Indonesia. Article 17 of Government Regulation (GR) 82/2012 requires providers of a "public service" to establish local data centers and disaster recovery centers in Indonesia.

In October 2018, an amendment to GR 82/2012 was submitted to the President for signature that would classify data into three categories: strategic, high-risk, and low-risk. The proposed amendment offers vague definitions of these categories, defining strategic data as data potentially disruptive to defense, security, governance, or as otherwise identified in law and regulation. The proposed amendment would require the President to issue a regulation enumerating specific types of strategic data and providing certain exemptions to the requirement that strategic data be stored, processed, and managed solely in Indonesian territory. Ministries would be allowed to set conditions under which high-risk data can be stored abroad, subject to concurrence from MCIT. Once issued, electronic system operators will have one year to comply with the new rule. In January 2019, additional provisions were added to the proposed GR 82/2012 revision, including a provision that would grant financial regulators, such as BI and OJK, autonomy to regulate high-risk financial sector data without MCIT concurrence or oversight and a provision expanding the scope of strategic data to include data that could "cause disruption the stability of the financial system." The timeline on issuance of the GR 82/2012 revision remains unclear.

While the proposed GR 82/2012 amendment remains pending, existing regulations continue to require companies to localize data. Pursuant to GR 82/2012, the MCIT issued Regulation 20/2016 on personal data protection, which requires electronic system providers to process protected private data only in data centers and disaster recovery centers located in Indonesia. BI and OJK have issued regulations for certain financial services sectors that require data centers and disaster recovery centers to be located in Indonesia. OJK Regulation 69/2016 mandates all insurers and reinsurers in Indonesia to establish data centers and disaster recovery centers in Indonesia by October 2017, and OJK Regulation 38/2016 and BI Regulation 9/2007 contain similar requirements for commercial banks operating in Indonesia. OJK's recently issued Regulation 13/2018 on Digital Financial Innovations in the Financial Services Sector includes a requirement for companies to place data centers and disaster recovery centers in Indonesia.

U.S. firms have expressed concern that Indonesia's local data center requirements inhibit cross-border data flows, impede market access, and raise costs, especially for small and medium-sized businesses. The United States continues to stress that data localization requirements are not necessary for regulators to have access to data for supervisory purposes, nor are such requirements needed to secure private information. To the contrary, they can undermine the security and integrity of data by requiring redundant storage and increasing the number of network nodes.

Internet Services

In 2017, Indonesia proposed two new packages of regulations with the potential to hinder foreign providers of Internet services from participating in the Indonesian market. Presidential Regulation 74/2017 formalized the E-Commerce Roadmap, which calls for 31 regulatory provisions that will affect financing, taxation, consumer protection, education and human resources, logistics, communication infrastructure, and cyber security for electronic commerce companies. The MOT and Coordinating Ministry for Economic Affairs are reportedly considering issuing a regulation pursuant to the roadmap that would contain several restrictive measures. A draft of this regulation would require many online merchants, platforms, and “intermediaries” like Internet service providers (ISPs), social media sites, and search engines doing business in Indonesia to register with the Indonesian government, set up or appoint a local representative office, and give priority to Indonesian goods and services. The draft regulation would also impose new privacy restrictions, including a ban on transfers of customer data to countries deemed by the Minister of Trade not to have a level of data protection “equivalent” to that of Indonesia.

MCIT continues to consider new regulations on online “digital platform services” (or “over-the-top” internet services). While the most recent proposed regulation removes some troubling provisions seen in prior versions, the draft rules would require many online services to establish or appoint local representatives and to register with MCIT. Stakeholders remain concerned that the scope and effect of this proposed regulation is too broad and could destabilize the fundamental architecture of Internet-delivered services. The United States has requested that Indonesia delay this regulation until these issues can be addressed.

Digital Products

In February 2018, the MOF issued Regulation 17/PMK.010/2018, which establishes five 8-digit tariff HS lines (import duty rates currently set at zero percent) for software and other digital products transmitted electronically, including applications, software, video, and audio. Companies have expressed concern over the potential administrative burden of this new regulation, including potential customs documentation or reporting requirements, but MOF has informally indicated that any data reporting under this system will be voluntary. Imposition of any duties on digital products would raise serious concerns regarding Indonesia’s longstanding WTO commitment, renewed on a multilateral basis in December 2017, not to impose duties on electronic transmissions.

INVESTMENT BARRIERS

Decentralized decision-making processes, legal uncertainties, and powerful domestic vested interests all contribute to Indonesia’s complex and difficult investment climate. These include Indonesian government requirements that often compel foreign companies to do business with local partners and to purchase goods and services locally. Moreover, a large number of U.S. firms continue to express concern about the Indonesian legal system, especially with regards to corruption.

Indonesia’s Negative Investment List provides a list of sectors that are subject to either foreign investment prohibitions or restrictions. Revisions to the list in 2014 closed certain sectors to foreign investment, including distribution and warehousing, and various areas of oil, gas, and mining services. A further revision to the list in 2016 permitted greater foreign investment in sectors like film, tourism, logistics, health care, and electronic commerce, while maintaining numerous other restrictions based on company size, location, and sector. With respect to telecommunications services, the revised list caps foreign ownership at 67 percent for fixed and mobile network services, Internet and multimedia-based communication service suppliers, Internet service providers, data communication system services, and public Internet telephony services. Previously, the foreign ownership limitation on suppliers of fixed services was 95 percent. The 2016 Negative Investment List contains a “grandfather clause” for then existing investments, though questions remain as to how it will apply in practice. In November 2018, the Indonesian government announced forthcoming revisions to the Negative Investment List; however, details of the affected liberalized sectors have not been finalized yet.

Energy and Mining

Over the past several years, the Indonesian government has introduced regulatory changes to increase government control and local content levels in the energy and mining sectors. The regulatory changes have raised costs for foreign businesses and raised questions about the sanctity of contracts already in force between private companies and the Indonesian government. The criminalization of several contract disputes has added to the uncertainty of the market.

In the oil and gas sector, Government Regulation 79/2010 allows the Indonesian government to change the terms of certain existing production sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Government Regulation 27/2017 revises Regulation 79/2010 to provide more incentives for upstream oil and gas investment, although the effectiveness of this regulation will depend on subsequent implementing regulations from the MOF and Ministry of Energy and Mineral Resources (MEMR). Furthermore, Presidential Regulation 35/2004, which regulates contractor activities in the upstream oil and gas sector, requires contractors to "prioritize" the use of domestic services, including energy-related services, as well as domestic technologies and engineering and design capabilities.

Foreign companies have noted that these local preference policies severely undermine their ability to operate in the Indonesian market. Indonesia's oil and gas regulator (SKK Migas) also has tightened the rules relating to how local content is measured with respect to oil and gas projects. Once fully implemented, the new criteria are intended to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Moreover, under the rules, goods and services supplied by companies without majority Indonesian shareholding can no longer qualify as local content. As a result, foreign energy service companies are at a disadvantage compared to majority Indonesian owned companies, which can more easily meet local content requirements, but often are less able to meet the technical requirements of a project.

Other actions have also negatively impacted the business climate in the oil and gas sector. In September 2018, the Indonesian government issued MEMR Regulation 42/2018 requiring all oil and gas contractors to sell their production to state-owned Pertamina in an attempt to reduce Pertamina's crude oil imports. The move comes on top of production sharing contracts in Indonesia (and the gross split contracts that are replacing them), which contain a standard clause specifying that 25 percent of all production must be sold to domestic refineries for domestic consumption. The policy, known as the Domestic Market Obligation, also requires companies to sell the crude oil to domestic refineries at a heavily discounted rate, providing a *de facto* subsidy to domestic refiners. BI Regulation 13/2011 (as amended by BI Regulation 14/2012) subjects export earnings to Indonesian banking law and regulations, despite production sharing contracts that allow companies to remit such earnings abroad. In addition, MEMR Regulation 31/2013 limits the amount of time expatriates may work in Indonesia's oil and gas sector to four years, and prohibits expatriates from working past the age of 55.

In the mining sector, Indonesia's 2009 Mining Law created a system for granting mining concessions based on licenses, although some companies still operate on previously existing contracts of work. The law and its implementing regulations impose onerous requirements on companies doing business in the mining sector, including local content requirements, domestic sale requirements, and a requirement to process raw materials in Indonesia prior to export. Because the mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than the contract of work system. Moreover, foreign companies that obtain mining licenses must divest 51 percent of their holdings to Indonesian ownership over a ten-year period. The Indonesian government is given the right to buy shares first, followed by Indonesian regional governments, SOEs, and private Indonesian companies, in that order.

In the power generation sector, MOI Regulation 54/2012 imposes varying levels of local content requirements with respect to goods and services used in power plants, including steam, hydroelectric, geothermal, gas, solar, and in the transmission and distribution network. The local content requirements for solar power plants were tightened as a result of MOI Regulations 4/2017 and 5/2017, which require 60 percent local content in solar modules and 100 percent in services by 2019. MEMR Regulation 19/2016 further mandates that the Indonesian state-owned transmission and distribution company, PLN, prioritize the use of domestic goods and services and meet a minimum standard of local content for solar (photovoltaic) power plant development, in accordance with existing MOI regulations.

As part of the government's effort to stabilize the Rupiah, Government Regulation 1/2019 mandates companies engaging in natural resources exports to place their foreign exchange proceeds from these export transactions in a designated account in a bank located in Indonesia and restricts the use of these proceeds to five categories: export duty and other levies within the export sector; loans; imports; profits or dividends; and/or other purposes as regulated under Article 8 of Law No. 25/2007 on Investment. This includes proceeds from exports of mining, plantation, forestry, and fisheries. A more detailed product list will be included in a follow-up regulation from the Ministry of Finance.

Medical Devices and Pharmaceuticals

The 2016 Negative Investment List raised the foreign investment cap for the manufacturing of raw materials for medicines from 85 percent to 100 percent in an apparent effort to redress shortages of raw materials, which are almost exclusively imported. However, foreign investment in the finished drugs industry is still capped at 85 percent. Foreign investment in the manufacture and distribution of medical devices is capped at 33 percent and 49 percent, respectively.

Medical devices sold by multinational companies in Indonesia face unclear or challenging market conditions on a number of fronts. These include uncertain progress on whether Indonesia will implement the ASEAN Medical Device Directive by the proposed 2020 implementation date; lack of a separate legal medical device definition so that pharmaceutical requirements (such as local manufacturing restrictions mentioned in the *Pharmaceutical Market Access* section) could potentially also apply to medical devices; and challenges in obtaining product approvals for the e-catalog system used for public procurements. In addition, Indonesia's public procurement agency (LKPP) implemented price controls on coronary stents in 2017, which follows India's lead for slashing prices for these products and exclusively targets major multinational medical device companies with significant U.S. operations. The United States has and will continue to engage with Indonesia on these price controls and encourage the government not to extend this policy to other medical device categories.

OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission (KPK) investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within the Indonesian government, limited access to financing, the slow pace of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, restrictive labor laws, arbitrary tax assessments, and lack of transparency in the development of laws and regulations. The ongoing process of transferring investment related decisions from central to provincial and district governments, while helping reduce some bureaucratic burdens, has led to inconsistencies between national and regional or local laws. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

Export Restrictions

Indonesia's 2009 Mining Law requires companies to process ore locally before shipping it abroad. Indonesia has implemented this law through a series of regulations that ban the export of over 200 types of mineral ore, including nickel and bauxite. U.S. stakeholders have expressed serious concern about these measures, but have been able to export ore as they plan and construct smelters in Indonesia. Until 2017, companies could export eight concentrates associated with these mineral ores (including copper, lead, and iron) as long as they paid a prohibitive export tax and met other requirements, such as building smelters in Indonesia. In 2017, Indonesia put in place a new set of requirements for the mining industry, as specified in Government Regulation 1/2017. Among other things, this regulation requires companies with existing contracts of work to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of ten years, and build a domestic smelter by January 2022. These licenses would allow companies to export mineral concentrates.

Indonesia imposes a progressive export tax on cocoa and palm oil exports. These cocoa and palm oil export taxes are calculated based on a monthly average of export prices. Although these taxes do not apply below a certain price threshold, there remains a standing levy of $50/metric ton for crude palm oil and $30/metric ton for processed palm oil. Indonesia also effectively bans the export of steel scrap and bans exports of raw and semi-processed rattan. The Indonesian government is considering imposing export taxes on other products, including coconut, base metals, and coal.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $8.0 billion in 2018, a 14.3 percent decrease ($1.3 billion) over 2017. U.S. goods exports to Israel were $13.7 billion, up 9.3 percent ($1.2 billion) from the previous year. Corresponding U.S. imports from Israel were $21.8 billion, down 0.8 percent. Israel was the United States' 22nd largest goods export market in 2018.

U.S. exports of services to Israel were an estimated $5.9 billion in 2017 (latest data available) and U.S. imports were $7.4 billion. Sales of services in Israel by majority U.S.-owned affiliates were $4.3 billion in 2016 (latest data available), while sales of services in the United States by majority Israel-owned firms were $2.6 billion.

U.S. foreign direct investment (FDI) in Israel (stock) was $26.7 billion in 2017 (latest data available), a 158.3 percent increase from 2016. U.S. direct investment in Israel is led by manufacturing, professional, scientific, and technical services, and information services.

TRADE AGREEMENTS

The United States-Israel Free Trade Agreement

When the two parties signed the United States-Israel Free Trade Agreement (FTA) in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While the United States and Israel have eliminated tariffs on non-agricultural goods as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The two parties completed negotiation and implementation of a successor ATAP in 2004. Originally scheduled to last through December 31, 2008, the 2004 ATAP granted improved access for select U.S. agricultural products. The second ATAP has been extended 11 times, most recently through December 31, 2019, to allow time for the negotiation of a successor agreement. The current ATAP provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel’s most-favored nation rates.

IMPORT POLICIES

Tariffs

Agriculture

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, juice, and some processed foods. According to industry estimates, the elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of $30 million to $55 million per year. U.S. producers of apples, pears, cherries, frozen vegetables, and stone fruits estimate that the elimination of Israeli trade barriers would lead to an increase of up to $15 million per year in export sales of these products. Stakeholders estimate that full free trade in agriculture could also result in significant increases in U.S. cheese exports to Israel. Similarly, stakeholders estimate that removing tariffs on food product inputs used by U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and lead to their expansion in Israel.

Nontariff Barriers

Customs Barriers and Trade Facilitation

As of January 10, 2018, U.S. exporters to Israel are no longer required to provide Israeli Customs a hard copy certificate of origin. Instead, U.S. exporters are simply required to print and sign a declaration on the invoice or on another commercial document.

Israel ratified the WTO Trade Facilitation Agreement on December 8, 2017. However, Israel has not yet submitted the notification required under Article 1.4, which includes information regarding publication and contact points, which was due to the WTO Secretariat.

Despite the obligation under the WTO Customs Valuation Agreement, Israel has not submitted Checklist of Issues replies to the WTO Committee on Customs Valuation. The U.S. Government will continue to emphasize the importance of submitting the overdue notification, which is integral to successful implementation of the WTO Customs Valuation Agreement.

TECHNICAL BARRIERS TO TRADE

Israeli regulatory bodies, including the Ministry of Economy (Standards Institute of Israel), Ministry of Health (Food Control Services), and the Ministry of Agriculture (Veterinary Services and the Plant Protection Service), often adopt standards developed by Israeli regulators or European standards organizations rather than international standards. This results in the exclusion of some U.S. products from the Israeli market and adds costs to certain U.S. exports to Israel. An example is Israel’s draft cosmetics regulation (known as the Pharmacists Ordinance), which does not align with international standards or U.S. technical regulations on issues including the roles of the Responsible Person; safety assessment for nanotechnology; or use of confidential business information. Another example is the Israeli Ministry of Transportation’s requirement that imported vehicles meeting U.S. Federal Motor Vehicle Safety Standards adjust their headlights to mimic the beam pattern of European standard headlamps. This requirement introduces added costs and a layer of complexity and uncertainty for U.S. automobile exporters.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or (4) purchasing from Israeli industry.

Israel is a signatory to the WTO Agreement on Government Procurement (GPA). Since January 1, 2009, the IC offset percentage for procurements covered by Israel’s GPA obligations has been 20 percent of the value of the contract; for procurements excluded from GPA coverage, the offset is 35 percent; and for military procurements, the offset is 50 percent. Under the revised GPA, which entered into force in 2014, Israel committed to phase out and eliminate offsets entirely after 15 years from the entry into force of the revised GPA in Israel.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in order to comply with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements funded by Israel.

A new $38 billion security assistance MOU signed by the United States and Israel began in fiscal year 2019. The MOU will be in place for ten years, through fiscal year 2028.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Israel made positive efforts in some areas to strengthen intellectual property rights (IPR) protection in 2018, including entrance into force of Israel's New Designs Bill, which replaced Israel's obsolete law governing industrial designs, and passage by Israel's Knesset of amendments to the country's copyright enforcement law. Despite these efforts, the United States remains concerned with certain deficiencies that remain with respect to Israel's protection of IPRs. On copyright protection, while Israel is a member of the World Intellectual Property Organization (WIPO) and a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not ratified either treaty. Israel has not ratified the WIPO Patent Law Treaty, lacks adequate protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for biologic pharmaceuticals, and lacks patent term restoration to compensate for marketing approval delays for pharmaceuticals. Israel has not acceded to the Singapore Treaty on the Law of Trademarks.

SERVICES BARRIERS

Israeli law largely prohibits broadcast television channels and radio stations, both public and private, from carrying advertisements. Israeli authorities allow only select private Israeli broadcast television channels and a few private radio stations to do so. A few broadcast television channels have received broadcast licenses and advertising privileges in exchange for local investment commitments. Foreign channels that are distributed through the country's cable and satellite networks are only permitted to carry advertising not directed at Israelis.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Electronic signatures are regulated by Israel's electronic signature law. Under this law, the consumer may decline to pay for any merchandise for which he or she did not physically sign. While this law remains a significant disincentive to the establishment of electronic commerce businesses, Israel's Knesset passed the first major amendment of the electronic signature law on February 28, 2018. The amendment aligns Israel's legal framework with commercial realities and removes certain legal obstructions to the use of electronic signatures, greatly reducing the list of documents that consumers cannot sign electronically.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $67.6 billion in 2018, a 1.8 percent decrease ($1.2 billion) over 2017. U.S. goods exports to Japan were $75.0 billion, up 10.9 percent ($7.4 billion) from the previous year. Corresponding U.S. imports from Japan were $142.6 billion, up 4.5 percent. Japan was the United States' 4th largest goods export market in 2018.

U.S. exports of services to Japan were an estimated $46.4 billion in 2017 (latest data available) and U.S. imports were $33.1 billion. Sales of services in Japan by majority U.S.-owned affiliates were $72.0 billion in 2016 (latest data available), while sales of services in the United States by majority Japan-owned firms were $158.6 billion.

U.S. foreign direct investment (FDI) in Japan (stock) was $129.1 billion in 2017 (latest data available), a 3.6 percent increase from 2016. U.S. direct investment in Japan is led by finance/insurance, manufacturing, and information services.

OVERVIEW

The U.S. Government continues to engage closely with the Japanese government to urge it to remove a broad range of barriers to U.S. exports, including barriers at the border as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market. In September 2018, President Trump and Prime Minister Abe agreed to start negotiations for a U.S.-Japan Trade Agreement, and the Administration notified Congress on October 16, 2018, of its intent to start negotiations following the completion of relevant domestic procedures.

IMPORT POLICIES

Japan is the third largest single-country market for U.S. agricultural products, with U.S. exports valued at nearly $13 billion in 2018, despite the existence of substantial tariffs and other market access barriers. Tariffs also have a negative impact on a range of industrial goods, such as chemicals, fish, wood products, and jewelry.

Tariffs

Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs that hinder U.S. exports of agricultural and other food products to its market. These high tariffs include grains, sugar, citrus, wine, dairy, and a variety of processed foods, and generally apply to food products that Japan produces domestically. Examples of double-digit import tariffs include: tariffs of 32 percent on oranges imported during the period from December to May; 22.4 percent to 40 percent on various types of cheese; 20 percent on dehydrated potato flakes; 17 percent on apples; 21.3 percent on tomato juice (29.8 percent for tomato juice with sugar added); 15 percent on almond flour; 10.6 percent on frozen sweet corn; 20.4 percent on cookies; up to 17 percent on table grapes imported during the period from March to October; and the lesser of 15 percent or 125 yen/liter (minimum of 67 yen/liter) on wine.

Fish and Seafood

Total U.S. fish and seafood exports to Japan in 2017 were valued at $860 million. However, tariffs of 3.5 percent to 10 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, remain an impediment to U.S. exports, as well as for Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, Pacific herring, pollock roe, cod roe, and surimi. Although Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the import quotas continue to present barriers to U.S. exports. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

Leather and Footwear

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 189 percent. In particular, Japan continues to apply TRQs to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or 4,300 yen (approximately $39), whichever is higher. These tariffs can double the cost of imports, and negatively affect market access for U.S.-made and U.S.-branded footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Nontariff Barriers

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a tariff-rate quota (TRQ) of 682,200 metric tons (milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries' (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Only a small amount of U.S. rice imported into Japan reaches Japanese consumers identified as U.S. rice. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. The MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing, animal feed, and re-export as food aid.

U.S. rice exports to Japan in 2017 were valued at $190 million, totaling 302,973 metric tons. Although U.S. rice exports make up only about four percent of all rice consumed in Japan, industry research shows that Japanese consumers might buy more high-quality U.S. rice if it were more readily available. The United States continues to monitor Japan's rice import system in light of Japan's WTO import commitments.

Wheat Import System

Japan requires wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices limit wheat consumption by increasing the cost of wheat-based foods in Japan. The United States continues to monitor carefully the operation of Japan's state trading entity for wheat and its potential to distort trade.

Pork Import Regime

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions in a manner similar to a variable levy. In order to prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to 482 yen/kg (approximately $4.30/kg) based on the difference between the actual import value and a government-established reference price. This duty is in addition to a 4.3 percent ad valorem duty that is charged on all chilled and frozen pork regardless of import value.

Beef Safeguard

In 1995, as part of the results of the Uruguay Round, Japan was allowed to institute a beef special safeguard (SSG) to protect domestic producers in the event of an import surge. The SSG is triggered when both the import volumes of beef from all trading partners and from non-FTA trading partners increase by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. When triggered, beef tariffs rise from 38.5 percent to 50 percent for the rest of the Japanese fiscal year. There are separate safeguards for fresh/chilled beef and frozen beef. The safeguard for frozen beef was triggered in the first quarter of Japanese fiscal year 2017 (April-June) after an increase in imports to just slightly above the threshold, causing the tariff on all frozen beef from the United States to increase to 50 percent until March 31, 2018.

Customs Barriers and Trade Facilitation

The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. The United States has encouraged Japan to raise its *de minimis* threshold for low-value imports from 10,000 yen (approximately $90), which would reduce documentation requirements and help U.S. shipments move more quickly across borders. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters. The United States also has certain concerns about unequal customs treatment between Japan Post and private companies (*see the Services Barriers section below for further information*).

Subsidies

Wood Products and Building Materials

Japan maintains numerous subsidy programs at the national, prefectural, and municipal levels that may favor domestic wood products over imports. In addition, the Competitiveness Enhancement Program for Plywood, Sawn Wood and Laminated Timber was established as part of a 2017 MAFF supplemental budget, making approximately $360 million available to support up to 50 percent of the expense of building projects to enhance forestry production and logistics systems. The United States is monitoring the disbursement of these funds and other subsidy programs.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements

The Japanese Consumer Affairs Agency (CAA) amended Japan's Food Labeling Standards on September 1, 2017. This amendment expands country of origin labeling (COOL) requirements to the main ingredients by weight in processed foods manufactured in Japan, with a transition period for compliance with the new requirements until March 2022. For example, a Japanese manufacturer of soy sauce would have to identify on the label the country where the soybeans used in its production were cultivated. While the expanded requirements do not apply to imported processed foods manufactured outside of Japan, they have the potential to adversely affect U.S. exports of food ingredients because processed food manufactured in Japan may be produced with imported ingredients. In such cases, Japanese manufacturers may avoid using ingredients from multiple origins (including the United States) as a way to minimize labeling burdens. Furthermore, the amendment allows for the possibility of incorrect food labeling because Japanese processed food manufacturers may indicate an "intended" or historical source of ingredients when an ingredient is not actually sourced from that country. The United States continued to raise concerns bilaterally with Japan in the WTO Committee on Technical Barriers to Trade in 2018.

Sanitary and Phytosanitary Barriers

Food Safety

Beef and Beef Products

In December 2003, Japan banned U.S. beef and beef products following the detection of an animal positive for bovine spongiform encephalopathy (BSE) in the United States. Following steps taken by Japan in July 2006, February 2013, and January 2015 that expanded U.S. access to the Japanese market for beef and beef products, the United States is currently eligible to export all beef and beef products from cattle less than 30 months of age slaughtered in the United States. The United States continues to urge Japan to fully open its market to U.S. beef and beef products from animals of all ages, consistent with recognition by the World Organization for Animal Health (OIE) that the United States is a country with negligible risk for BSE.

Food Additives

Japan's regulation of food additives has restricted imports of several U.S. food products, especially processed foods and alcoholic beverages. Japan is an important market for processed food; U.S. exports of processed foods and alcoholic beverages to Japan were valued at $2.8 billion in 2017. Certain additives that are widely used in the United States and other markets are not permitted in Japan, including carmine, a natural red food coloring used in a variety of goods, such as baked, confectionary, ice cream, and yogurt products. In addition, U.S. manufacturers have raised concerns about the length of Japan's approval process for processing aids, which are substances used in food processing that are no longer present, or present at very low levels, in the final food product. The Japanese government created the Food Additive Designation Consultation Center (FADCC) in July 2014 to assist applicants in preparation of applications for regulatory approval of food additives. The FADCC's services have not been shown to reduce the time needed for preparing applications.

Pre- and Post-Harvest Fungicides

Japan classifies fungicides applied pre-harvest as pesticides, and fungicides applied post-harvest as food additives. Japan's requirement that post-harvest fungicides be classified as food additives does not have a significant impact on domestic producers, as Japanese farmers do not generally apply fungicides after harvest.

Japan previously required separate review processes for the pre-harvest and post-harvest uses of each fungicide. In 2018, Japan registered the first fungicide through a single review process that is intended to lead to more timely reviews. The United States remains concerned that Japan requires products treated with a post-harvest fungicide to be labeled at the point of sale with a statement indicating a list of the chemicals used, which may put U.S. products at a disadvantage relative to Japanese products by dampening demand for U.S. products. The United States will continue to work with Japan on these issues.

Maximum Residue Limits

Japan has historically maintained burdensome application requirements for pesticide maximum residue level (MRL) approvals. The lengthy review process for registration of new pesticides and establishment of MRLs can delay the ability of U.S. growers to use newer and safer crop-protection products on crops to be shipped to Japan. In 2016, the first pesticide application was submitted under Japan's streamlined application process, which is intended to reduce the time, cost, and duplication of completing separate applications for pre-harvest and post-harvest uses of fungicides. The United States continues to work with Japan to improve the process.

Japan's procedures for enforcement of MRLs result in uncertainty for shippers, including those who have never violated Japan's standards. After a single pesticide MRL violation, Japan imposes enhanced surveillance of all imports of the product on which the MRL violation was detected from that particular exporting country. If a second violation is found during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance.

Japan has made significant progress in establishing science-based MRLs. The establishment of numerous permanent MRLs has resulted in fewer disruptions in trade. The United States continues to work with Japan and U.S. producers to support Japan's MRL establishment process and to address MRL-related concerns.

Plant Health

Chipping Potatoes

In 2017, Japan lifted a ten-year ban on imports of chipping potatoes from Idaho when Japan determined there were no longer phytosanitary concerns. Chipping potatoes from 16 U.S. states are now eligible for importation. However, despite the lack of phytosanitary concerns, shipments continue to be limited to a six-month import window (February to July), and they remain subject to a number of restrictions, including on overland transportation to facilities away from ports. The United States will continue to engage with Japan to further improve access for U.S. chipping potatoes.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA), which obligates Japan to open its government procurement to suppliers from the United States and other GPA members. Japan has also made commitments to the United States under bilateral agreements. During 2018, U.S. industry flagged concerns with Japan's use of technical specifications. Specifically, U.S. industry has argued that technical specifications were selected to exclude U.S. products and services, or direct procurements towards a specific Japanese company. The United States has raised these cases with Japan and will continue to engage with Japan to ensure all procurements covered under these agreements are conducted consistently with Japan's procurement obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights (IPR) protection and enforcement. The United States continues to work with Japan to improve IPR protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

The United States has urged Japan to continue to reduce piracy rates, including by adopting methods to protect against piracy in the digital environment. The United States also seeks improvements to Japan's private use exemption rules to cover all works protected by copyright and related rights. The United States continues to urge Japan to strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works, as well as effective criminal and civil remedies against trafficking in tools used to circumvent such technological protection measures.

As of March 2019, under the "Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuff" (GI Act), which took effect in 2015, 72 geographical indications (GIs) for domestic agricultural products, 72 GIs for European agricultural products, and 10 additional applications have been announced on MAFF's website. In addition, 10 GIs for domestic alcoholic beverages and 146 for foreign alcoholic beverages have been registered by Japan's National Tax Agency.

On November 29, 2018, the Diet passed revisions to the GI Act that would limit the continued use of protected terms by third parties to a period of up to seven years. On February 1, 2019, 210 EU-proposed GI protections went into effect, including 71 terms for food to be protected under Japan's GI Act, and 139 alcohol and alcoholic beverage terms to be protected under the Act Concerning Liquor Business Associations and Measures for Securing Revenue from the Liquor Tax.

The United States continues to monitor implementation of Japan's GI system, as well as implementation of its recent agreement with the European Union with respect to GIs. The United States urges Japan to refrain from measures that would unfairly limit market access for U.S. products and to ensure consistency with core transparency and due process principles, in particular with respect to the protection of existing trademarks, the safeguarding of the use of generic terms, and the effective operation of objection and cancellation procedures.

SERVICES BARRIERS

Express Delivery – Japan Post

In the express delivery service sector, the United States remains concerned by unequal conditions of competition between Japan Post and international express delivery suppliers, including in areas such as quarantine procedures and duty calculation. Private company shipments arriving at airports are required to clear quarantine at the airport, which requires expensive, on-airport facilities. Japan Post packages receive preferential treatment in that they can be taken from the airport to be checked at international distribution centers. Further, in the past year, several companies have also reported that Japan customs employees are not applying Japan's *de minimis* laws consistently to Japan Post Express Mail Service (EMS) shipments when performing inspections and duty tax calculations for lower-value shipments on behalf of EMS.

The United States continues to urge Japan to take action to enhance fair competition by leveling the playing field, including by equalizing customs procedures and requirements and prohibiting the subsidization of Japan Post's international express service with revenue from non-competitive (monopoly) postal services.

The United States also continues to urge the Japanese government to ensure that the postal reform process, including implementation of revisions to the Postal Privatization Law, is fully transparent, including by providing full and meaningful use of public comment procedures and opportunities for interested parties to express views to government officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes is a key element in the postal reform process, as is the continued public release of meeting agendas, meeting minutes, and other relevant documents. The United States will continue to monitor the Japanese government's postal reform efforts carefully to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post and private sector participants in Japan's express delivery markets.

Insurance Services

Japan's insurance market is the third largest in the world, after that of the United States and China, with a premium volume of $422.1 billion in 2017 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and Japan Post (JP) Insurance, a majority government-owned entity of JP Holdings, also provide substantial amounts of insurance to consumers. Given the size and importance of Japan's private insurance market, the United States continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance

Japan's postal life insurance system retains a substantial share of Japan's insurance market. The United States has longstanding concerns about the postal insurance company's negative impact on competition in Japan's insurance market and continues to monitor closely the implementation of reforms. The United States has long urged Japan to take steps to address a range of level playing field concerns with regard to Japan Post in the insurance sector.

The United States continues to urge Japan not to allow the JP Group to expand the scope of operations for its financial services companies before a level playing field is established. Restraints on the scope of JP Group operations – including the cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer – have helped to limit the extent to which the uneven playing field harms private insurance companies. In 2016, the Japanese government revised a ministerial ordinance to raise the per-customer deposit cap of JP Bank from 10 million yen to 13 million yen, and to raise the per-policyholder insurance coverage cap of JP Insurance from 13 million yen to 20 million yen. In December 2018, the government's committee on postal privatization proposed doubling the deposit cap to 26 million yen. The committee states that this should be accompanied by a reduction in the government's ownership of JP Bank, but has not committed to any specific date by which the majority government-owned JP Holdings must sell JP Bank shares. As such increases do not require any legislative change, extra caution should be exercised in the process, so that the level playing field issue is properly addressed.

Japan continues to honor the statement by Deputy Prime Minister Taro Aso in 2013, that the Japanese government will refrain from approving new or modified cancer insurance or stand-alone medical products of JP Insurance until it determines that equivalent conditions of competition with private sector insurance suppliers have been established, and that JP Insurance has a properly functioning business management system in place. In addition, before final decisions are made, it is vital that Japan's process for approving new products be transparent and open to all parties, including active solicitation and consideration of private sector views, along with careful analysis and full consideration of actual competitive conditions in the market.

Insurance Cooperatives

Insurance businesses run by cooperatives (*kyōsai*) hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (*e.g.*, MAFF or the Ministry of Health, Labor and Welfare (MHLW)) instead of by the Financial Services Agency (FSA), which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyōsai* critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over *kyōsai*.

Bank Sales of Insurance

Banks have become an important distribution channel for the sale of insurance products. In 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. However, limits remain on the sales of some products, different rules exist for the treatment of customer data in some cases, and sales restrictions on insurance are applied to certain categories of customers (for example, customers who work for small- or medium-sized corporate borrowers). The United States continues to call on the Japanese government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and that takes into account global best practices to further enhance policyholder protection and improve consumer choice.

Financial Services

The United States continues to urge reforms in Japan's financial services sector to expand options for defined contribution pensions and promote sustainable lending practices that rely less on family guarantees. The FSA continues to enhance its engagement and outreach with both domestic and foreign financial firms operating in Japan, and reorganized its bureaus in 2018 in order to further improve its ability to respond to a fast-changing industry. The United States also recommends a continued focus on transparent practices, such as providing written interpretations of Japan's financial laws.

Legal Services

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan, and prohibits foreign lawyers from establishing branch offices in Japan (except for one type of firm, which is first required to corporatize locally). The United States continues to urge Japan to further liberalize the legal services market. For example, the United States urges Japan to eliminate the requirement that two years of post-admission practice of home country law take place outside Japan; ensure that legal or bar association rules do not impede Japanese lawyers from becoming members of international legal partnerships; and significantly simplify and accelerate the registration process for new foreign legal consultants.

In October 2018, the Ministry of Justice (MOJ) drafted an amendment to the Foreign Lawyers Act addressing certain concerns. The amendment includes proposals such as reducing the requirement for post-admission practice of home country law from two years to one year and permitting foreign lawyers to establish branches with Japanese lawyers. However, the draft amendment has not been submitted to the Diet. The United States will monitor progress with respect to the amendment.

Educational Services

The United States continues to urge the Japanese government to work with foreign universities to find a nationwide solution that grants tax benefits to foreign universities operating in Japan comparable to those provided to Japanese schools and allows foreign universities to continue providing their unique contributions to Japan's educational environment.

American universities have reported success in being recognized as educational institutions eligible for issuance of visas to foreign students to study at their campuses in Japan. However, despite extensive consultations with authorities, no American university has been able to satisfy all the legal requirements to be granted "educational corporation" (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be "independently administered" (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of *gakkō hōjin* status means foreign satellite universities are also excluded from participation in new Japanese government grant programs that promote international exchange and provide financial support for students wishing to study abroad.

Telecommunications Services

The United States continues to focus on ensuring fair market opportunities for emerging technologies and business models in Japan, ensuring a regulatory framework appropriate for addressing converged and Internet-enabled services, and maintaining competitive safeguards on dominant carriers.

Dominant Carrier Regulation

The Nippon Telegraph and Telephone Corporation (NTT) continues to dominate Japan's fixed-line market through its control over almost all "last-mile" connections. Although NTT's market share has been declining for the last seven years and declined by 0.5 percent from 2017 to 2018, it still holds a 67.8 percent share as of June 2018, including wholesale services in the fiber-to-the-home market. NTT's authority to bundle its fixed-line services with mobile phone operator NTT Docomo's mobile service is also of concern, as it appears to undermine the rationale for structurally separating the companies.

Spectrum Allocation

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services, and the factors the Ministry of Internal Affairs and Communication (MIC) uses to determine how to evaluate applications have raised questions about the fairness of the allocation process. Several current spectrum allocations create bands unique to Japan (*e.g.*, for self-driving vehicles) that prevent U.S. company technologies from functioning in Japan. In 2017, the Cabinet established MIC's Discussion Panel on Growth Strategy for Effective Use of Radio Frequencies and associated expert working group, charged with examining ways to use spectrum more effectively. However, the panel's August 2018 final report recommended only that international trends should continue to be monitored. The panel also recommended that MIC disclose information about frequencies allocated to government bodies, as is done in the United States.

In December 2018, following a one-month public comment period, MIC finalized new guidelines on spectrum allocation for 5G mobile telecommunications. MIC is allocating spectrum based on a series of two-stage screening criteria set forth in the guidelines: absolute screening criteria (minimum threshold requirements that all applicants must satisfy) and comparative screening criteria (which still allows MIC discretion to evaluate and choose among applicants). Applications from prospective 5G mobile operators were accepted in January and February 2019, followed by final frequency allocations in March 2019. Given anticipated spectrum needs for the launch of next-generation "5G" services, reforming Japan's system for assigning and allocation spectrum should remain a priority.

Handset Pricing

MIC's January 2017 "Guideline for Improvement on Handset Subsidies for Smartphones" significantly limits mobile service supplier subsidies on the sale of new mobile handsets. Though ostensibly intended to reduce overall mobile service charges (which presumably reflect such subsidies), there is no evidence that this policy has had that effect. In fact, it could hurt both handset manufacturers that frequently introduce new models and operators that seek to compete for customers through handset promotions.

The Cabinet Secretariat (CAS) is pushing mobile phone carriers to lower their prices, arguing mobile fees can be reduced by 40 percent based on the higher prices in Japan as compared with other countries. MIC is thus considering further intervention in the market both through further restrictions on mobile handset subsidies and ongoing monitoring of mobile communication prices.

Imports for Testing and Demonstration Purposes

Unlike the United States, Japan does not allow for the importation of any devices for the purposes of testing or demonstration that do not already hold regulatory authorizations. This restriction gives Japanese companies an advantage in the market, because foreign companies face delays in testing devices on local carrier networks before product launch. These restrictions also make it difficult for foreign companies to collaborate with their local engineers on design, development, accessories, and compatibility with other devices, and prevent foreign companies from obtaining local customer feedback during the development process.

Health Information Technology

The United States has urged Japan to improve the quality and efficiency of health care by rapidly implementing health information technology (IT) that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between U.S. and Japanese government health IT experts continues to address health IT issues of mutual interest.

Renewable Energy Services

U.S. companies attempting to sell renewable energy to Japan have reported being denied grid access because the grid is "full". Legacy utility companies control both transmission and generation in Japan, which reportedly allows them to overstate actual grid usage, and understate capabilities, to prevent competition. As part of Japan's energy reform process, laws that will unbundle the transmission and generation companies will take effect in 2020. The United States will closely monitor this process. In addition, Japan's technical and safety standards do not appear to reflect international standards, and complicated codes and slow approval processes for new energy technology benefit incumbents.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Privacy

Based on the amended Act on Protection of Personal Information (APPI), the new Personal Information Protection Commission (PPC) issued new orders and guidelines in October and November 2016, respectively. The new guidelines recognize the APEC Cross Border Privacy Rules (CBPR) system as a mechanism that companies can avail themselves of to demonstrate compliance with Japanese requirements for transferring data outside Japan. APPI took full effect in May 2017. The United States will continue to monitor its implementation.

In July 2018, Japan and the European Union concluded negotiations on a reciprocal finding of an adequate level of data protection, thereby agreeing to recognize each other's data protection systems as "essentially equivalent." On January 23, 2019, Japan and the European Union mutually recognized each other's data protection laws as providing an adequate level of protection of personal data, allowing personal data to flow freely between the two jurisdictions. As part of the agreement, Japan put in place additional requirements regarding EU data, including supplementary rules regarding the transfer of EU data from Japan to another third country. Japan's PPC is currently drafting implementing guidance for the supplementary rules. The United States will closely monitor this process to determine whether it may cause any disruptions in the transfer of EU data from Japan to the United States.

Digital Platform Regulation

In December 2018, METI, MIC, and the Japan Fair Trade Commission jointly issued a policy paper identifying certain principles and initiating a study on the need to regulate digital platforms, ostensibly to address competition-related issues. Any proposed regulations will warrant close monitoring to ensure that they do not curtail innovation or disrupt healthy market competition.

INVESTMENT BARRIERS

Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. According to OECD statistics, the inward FDI stock at the end of 2017 (latest data available) was only 4.1 percent of GDP in Japan. Inward foreign merger and acquisition (M&A) activity, which accounts for a large portion of FDI in other OECD countries, also lags in Japan.

While the Japanese government recognizes the importance of FDI to revitalizing the country's economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2013 the government of Prime Minister Abe announced its goal of doubling Japan's inward 2012 year-end FDI stock by 2020, and it confirmed this commitment in its 2018 growth strategy. The government is pursuing a range of policies intended to promote this target.

The number of annual inbound M&A deals has remained relatively low for an economy the size of Japan, raising questions about the adequacy of the government's measures if its 2020 target is to be achieved. A variety of factors make inbound M&A difficult in Japan, including attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interests of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see the Other Sectoral and Cross Sectoral Barriers section below for further information*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Compliance and Deterrence

Japan's Anti-Monopoly Act (AMA) provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior in other countries, have been few, and penalties against convicted company officials have been weak, although the Japan Fair Trade Commission (JFTC) has routinely imposed sizable civil "surcharges" against cartelists. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid-rigging violations of the AMA in order to ensure open and competitive markets.

U.S. stakeholders in Japan have expressed continued concern regarding JFTC investigations under the "unfair trade practices" clause of the AMA, in particular the implementation of its prohibition against "abuse of superior bargaining position" and related administrative guidance. They assert that vague and ambiguous standards for liability in this area provide the JFTC with broad enforcement discretion and may make good faith efforts to comply with the AMA difficult. In an attempt to address some of these concerns, in June 2017, the JFTC released revised AMA guidelines on distribution and business practices, based on a report compiled by an advisory body. The JFTC stated in its 2017 annual report that the guidelines provide clearer thresholds for judging the legality or illegality of "vertical restriction on competition" or "the fear of impeding fair competition."

Improving Fairness and Transparency of JFTC Procedures

In 2015, the JFTC implemented revised procedures for JFTC hearings and appeals from JFTC orders to address concerns as to whether the preexisting system provided sufficient due process protections. The Diet enacted a partial amendment to the AMA in an omnibus CPTPP bill on June 30, 2018. The amendment, which took effect on December 30, 2018, includes adoption of a commitment system pursuant to which the JFTC may terminate an investigation based on a party's commitment to undertake specified actions to remedy the alleged violations of the AMA.

U.S. stakeholders in Japan continue to express concern regarding the lack of recognition of attorney-client privilege and severe limitations on witnesses' access to counsel during investigational interviews. In early 2019, reports indicated that the JFTC is considering a limited recognition of the privilege in connection with investigations of unreasonable restraints of trade pursuant to Article 3 of the AMA. The United States will continue to monitor developments and advocate for fuller recognition of attorney-client privilege by the JFTC.

In November 2018, the JFTC, along with the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade, and Industry issued a draft interim report of their joint study on the possible monopoly of data by mega IT companies and its possible impact on mergers and acquisitions. The draft report mentions possible measures to be taken on completion of the survey, such as supplementing the AMA with additional regulations on trade practice or changes to other laws. The study group intends to seek opinions from industry through interviews and public comments, but company representatives were not part of the study group.

OTHER SECTORAL AND CROSS-SECTORAL BARRIERS

Transparency

Advisory Groups

Advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan. However, the process of forming these groups can be opaque, and often non-members are not offered meaningful opportunities to provide input into these groups' deliberations. The United States continues to urge Japan to ensure transparency with respect to the formation and operation of advisory councils and other groups convened by the government by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure

Many U.S. companies remain concerned by inadequate implementation of the public comment procedure by Japanese ministries and agencies. For example, in some cases, comment periods appear unnecessarily short, and comments do not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The United States has stressed the need for Japan to make revisions to improve the system, such as lengthening the standard public comment period for rulemaking.

Commercial Law

Foreign investment into Japan remains constrained by a range of issues, including: conditions for using tax-advantaged merger tools for inward-bound investment in Japan; securities law and capital market issues inherent in cross-border stock-for-stock transactions; and corporate governance systems that have not adequately reflected the interests of shareholders. The United States continues to urge Japan to: identify and eliminate impediments to cross-border mergers and acquisitions; ensure the availability of reasonable and clear incentives for many such transactions; and take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The United States welcomed steps taken in the 2015 revised Companies Act and Corporate Governance Code to increase management accountability and corporate transparency, and continues to urge Japan to further improve its commercial law and corporate governance systems in order to promote efficient business practices, capital markets development, and shareholder rights in accordance with international standards. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting and strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders.

Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of nontariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low.

Nontariff barriers include certain issues relating to unique standards and testing protocols; an insufficient level of transparency, including the lack of sufficient opportunities for input by interested persons throughout the process of developing regulations; and hindrances to the development of distribution and service networks. These barriers, together with other past and current policies and practices, have had the long-term effect of excluding and disadvantaging U.S. manufacturers in the Japanese market.

Medical Devices and Pharmaceuticals

According to figures from MHLW, imported U.S. medical devices held a 26 percent market share in Japan in 2016 and were valued at $6.9 billion (latest data available). The U.S. market share of medical devices increases to 60 percent when local production in Japan by U.S. companies is included. U.S. imports of pharmaceuticals comprised 7 percent, or $6.3 billion, of the overall Japanese market in 2016 (latest data available). The total market share of U.S.-origin pharmaceuticals in Japan is estimated to be approximately 20 percent if local production by U.S. firms and compounds licensed to Japanese manufacturers are included.

Over the last decade, the government of Japan has increased the appeal of Japan's pharmaceutical and medical device markets by reducing regulatory approval timelines and by improving the predictability of the reimbursement pricing system. However, regulatory changes in 2018 threaten to erode this progress.

For example, the pilot introduction of the Price Maintenance Premium (PMP) rule in 2010, which rewards innovation and allows for pricing stability throughout the patent life of a medicine, has significantly reduced the drug lag and accelerated patient access to innovative pharmaceutical products. However, in 2018, Japan made changes to its reimbursement system that may reverse this recent trend. The number of products that can qualify for the PMP has been reduced, and fewer companies have received the full benefit of the PMP due to newly established requirements. Several factors taken into consideration in PMP calculations, such as the number of local clinical trials and product launches, appear to make it easier for Japanese companies to qualify for the premium, and reimbursement outcomes suggest that U.S. companies, especially small and medium-sized enterprises, are at a disadvantage compared to Japanese companies.

In addition, U.S. stakeholders are concerned that Japan's proposed move from the current biennial price revision to an annual price revision and its implementation of a new Health Technology Assessment (HTA) will create significant uncertainty about prices for advanced medical devices and innovative pharmaceuticals, undermining investment planning for capital-intensive product developments in Japan. U.S. stakeholders have also expressed strong concerns about a lack of transparency and stakeholder consultation in the development of these pricing reform initiatives.

The United States continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation; to solicit and consider the input of all stakeholders, including U.S. stakeholders, when developing any measures related to these policies; and to follow transparent processes in the present and future development of any new policies and measures. The United States also encourages Japan to continue working with U.S. industry in its efforts to improve the regulatory environment, and continues to urge Japan to move towards international harmonization of its regulations in clinical development, multiregional clinical trials, and risk management.

Nutritional Supplements

In Japan, nutritional supplements are regulated as a part of a loosely defined "health food" subcategory of foodstuffs, unlike in the United States, where nutritional supplements are regulated independently. Japan has taken steps to streamline import procedures and to improve access in this market. However, many significant market access barriers remain, including a 12.5 percent tariff on vitamin imports.

Japan's Consumer Affairs Agency (CAA) started implementing a new system for Food with Functional Claims (FFC) as of April 1, 2015. The FFC system is a third food-related category under the Food with Health Claims system, parallel to two other premarket government approval systems, Foods for Specified Health Uses (FOSHU) and Foods with Nutrient Function Claims (FNFC). These processes apply to both imported and domestic products. Producers of most nutritional supplements are generally unable to obtain FOSHU approval or FNFC designation due to FOSHU's costly and time-consuming approval process and FNFC's standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify for FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system. In 2016, a CAA expert panel considered including such products in the FFC but ultimately elected against inclusion, in part due to strong opposition from consumer groups. U.S. industry remains concerned that the 2015 FFC regulations on health food and dietary supplements are not in line with global best practices.

Cosmetics and Quasi-Drugs

Japan's market for personal care and cosmetics products was approximately $16.3 billion in total sales in 2017 (latest data available), making Japan one of the world's five largest markets for these goods. The United States is consistently the second or third largest source of cosmetics imported into Japan, consisting of skincare, haircare, makeup preparations, fragrance, and toiletry goods such as pre- and after-shaving products, oral care, and bath preparations. In 2017 (latest data available), the U.S. exported $382.1 million, representing 15 percent of total cosmetics imports to Japan.

Advances in market registration for quasi-drugs and particularly cosmetics products that are classified as "medicated cosmetics" or quasi-drugs under Japan's Pharmaceutical and Medical Devices Act (formerly known as the Pharmaceutical Affairs Law) continued to be delayed. As a result, common products with decades of established consumer use that contain active ingredients, such as anti-dandruff shampoos and conditioners, can face delays of six months or more before entering the market. The quasi-drug approval process for these common products, ingredients, and supporting claims includes requirements that are burdensome and lack transparency, and that do not appear to enhance product safety, quality, or efficacy. MHLW has made some progress towards creating a monograph system, known as *besshi kikakushu* or "Quasi Drug Additives Spec Codex," which lists previously reviewed ingredients outside the compendium and would speed up the approval of products that use previously reviewed active ingredients and claims, similar to the system used by the U.S. Food and Drug Administration. However, due to concerns over protections for proprietary formulations, companies have been reluctant to submit their ingredient information to the list.

As a pilot to assist MHLW in moving towards formalizing a monograph system, U.S. and local industries worked with MHLW to develop product approval guidance for medicated hair products in May 2014 and for anti-bacterial soaps in May 2018. These provide industry with certainty as to MHLW's requirements, while also improving timelines for product approvals, as local prefectural governments can use the standards to approve products. Industry is calling on MHLW to develop similar standards for other medicated cosmetics. These reforms, if implemented, could help create a more open and competitive market. The United States will closely monitor developments.

Aerospace

The government of Japan has emphasized the importance of encouraging the growth and competitiveness of domestically-produced defense products, but continues to look for partnerships or imported solutions should domestic producers be unable meet performance, cost, schedule or technical requirements. Japan acquires more than 90 percent of its defense imports from the United States and has shown a growing interest in interoperable technology with advanced capabilities. U.S. military sales have increased significantly every year since 2012, while growth of U.S.-licensed military products produced in Japan have remained relatively flat. Japan has issued a 5-year defense procurement plan to expand its defense spending through fiscal 2023 in response to regional security challenges. The United States will continue to monitor progress in this area, as Japan's direct purchase of U.S. military systems is expected to continue to grow.

Japan is an important U.S. Open Skies partner in the Asia-Pacific region. While the United States and Japan enjoy an Open Skies relationship, Tokyo's Haneda airport is operationally constrained, and access to the airport for international operations continues to be limited. The United States continues to monitor this situation, as Haneda is expected to open additional slot pairs for international service by 2020, some of which should be available to U.S. carriers.

JORDAN

TRADE SUMMARY

The U.S. trade balance with Jordan shifted from a goods trade surplus of $234 million in 2017 to a goods trade deficit of $207 million in 2018. U.S. goods exports to Jordan were $1.6 billion, down 16.4 percent ($314 million) from the previous year. Corresponding U.S. imports from Jordan were $1.8 billion, up 7.5 percent. Jordan was the United States' 67th largest goods export market in 2018.

U.S. exports of services to Jordan were an estimated $760 million in 2017 (latest data available) and U.S. imports were $666 million. Sales of services in Jordan by majority U.S.-owned affiliates were $56 million in 2016 (latest data available), while sales of services in the United States by majority Jordan-owned firms were $3 million.

U.S. foreign direct investment (FDI) in Jordan (stock) was $232 million in 2017 (latest data available), a 11.0 percent increase from 2016.

TRADE AGREEMENTS

The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA), which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. Jordan imposes zero percent duties on nearly all U.S. products, with exceptions for a few product lines, such as alcoholic beverages and pornographic materials. Following consultations under the United States-Jordan Joint Committee, in 2012 Jordan endorsed the United States-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services.

IMPORT POLICIES

Taxes

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation in addition to the general sales tax. Over the past several years, Jordan has increased special taxes on certain goods, changes which can be unpredictable. In July 2018, Jordan increased to 20 percent a tax on carbonated drinks initially imposed at 10 percent in February 2017. U.S. beverage companies report that the increase has reduced their sales. The U.S. Government continues to work with Jordan to resolve this issue.

Nontariff Barriers

Import Licensing

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approvals process can be time consuming and at times lacks transparency. The United States continues to engage Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry, Trade, and Supply occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. The government of Jordan requires a special import license prior to the importation of telecommunications and security equipment.

TECHNICAL BARRIERS TO TRADE

Jordan recognizes and accepts international standards and specifications utilized by U.S producers. However, Jordan's signing of a twinning program[13] with the European Union (EU) on standards in February 2018 has begun to create obstacles to U.S. exporters in product areas where standards developed by U.S.-domiciled standards organizations differ from those of the EU. In addition, Jordan periodically imposes additional regulatory requirements, which serve as barriers to trade. Without prior notice, in late 2018, Jordan's Food and Drug Administration (JFDA) implemented a rule that restricts the sale of and distribution of food products labeled as containing genetically engineered ingredients. JFDA followed this announcement with draft regulations on imported genetically engineered products that, if adopted as drafted, would disrupt trade. The U.S. Government continues to work with Jordan to resolve this issue.

SUBSIDIES

Jordan abolished its export subsidy scheme effective January 1, 2019, when the new Income Tax law Number 38 went into effect.

Jordan imposes a $50 per ton tax on exports of steel scrap, discouraging its exportation.

GOVERNMENT PROCUREMENT

Jordan is not a signatory to the WTO Agreement on Government Procurement (GPA), but became an observer of the WTO Committee on Government Procurement in March 2000. In 2002, Jordan commenced the process of acceding to the GPA, with the submission of its initial entry offer. Jordan subsequently submitted several revised offers in response to requests by the United States and other GPA Parties for improvements. Negotiations on Jordan's accession continue. Jordan offers local companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. Jordan joined the Patent Cooperation Treaty in 2017, participated in U.S. Government-sponsored technical assistance, and worked closely with U.S. Government enforcement agencies. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, prosecution efforts need to be strengthened, particularly with respect to utilizing *ex officio* authority to pursue criminal investigations without waiting for initiation by the rights holder.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Information and Communication Technology (ICT) firms operating in Jordan frequently are required to maintain a significant local presence and to contract with local service providers.

[13] Twinning is an EU technical assistance device that provides support for the implementation and enforcement of EU standards.

Jordan maintains restrictions on app-based transportation services. For example, drivers using such services must obtain a license that costs up to $600 and that limits the driver to working for only one service supplier. Additionally, regulations place full liability for driver actions on the app provider through which the driver is sourcing work.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $655 million in 2018, a 174.0 percent increase ($416 million) over 2017. U.S. goods exports to Kazakhstan were $729 million, up 32.1 percent ($177 million) from the previous year. Corresponding U.S. imports from Kazakhstan were $1.4 billion, up 75.0 percent. Kazakhstan was the United States' 85th largest goods export market in 2018.

TRADE AGREEMENTS

Kazakhstan is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kyrgyzstan, and Russia. On November 30, 2017, Kazakhstan ratified the EAEU Customs Code, which governs customs rules for all member countries; the EAEU Customs Code came into force as of January 2018. As a consequence of its membership in the EAEU, Kazakhstan's import tariff levels[14] (with the exception of a substantial number of transitional tariffs under Kazakhstan's WTO accession), trade-in-transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for member states and with coordinating economic integration among member states. While tariff harmonization and standardized regulatory approvals across member states have eased the process for some U.S. companies doing business within the customs union, some regulatory regimes – such as medical devices and pharmaceuticals – have not been standardized and still require approvals by the individual member States.

In May 2018, the EAEU signed an Interim Agreement to create a temporary free trade area between the EAEU and its member states and Iran. The agreement will be effective for three years.

IMPORT POLICIES

The Russian sanctions regime has complicated the transit of goods from third countries to Kazakhstan through Russian territory. On November 20, 2018, Russian authorities imposed a temporary ban on the transit of U.S. poultry through Russian territory to Kazakhstan under the pretext of Kazakhstan's non-compliance with sanitary and phytosanitary standards and its inability to securely trace goods subject to veterinary control. The 2018 ban, in turn, was lifted in January 2019, but replaced by the requirements that: (1) poultry shipments be recorded in Russia's "Mercury" cargo tracking system (an electronic certificates verification system for imported and domestically produced goods); and (2) any re-loading and transit to Kazakhstan should only take place through EU establishments accredited for the storage of products of animal origin.

Tariffs and Taxes

Tariffs

As part of its WTO accession in 2015, Kazakhstan agreed to lower 3,512 tariff rates gradually, to an average of 6.1 percent by 2020. In January 2016, Kazakhstan began applying lower tariff rates to certain food products, automobiles, airplanes, railway wagons, lumber, alcoholic beverages, pharmaceuticals, freezers, and jewelry. Kazakhstan lowered additional tariff rates in 2017 and 2018, and a total of 2,900 tariff rates

[14] Currently, 60 percent of tariffs are harmonized within the EAEU.

were below its 2015 tariffs as of December 1, 2018. Kazakhstan introduced administrative measures to prevent the re-export of goods released at these lower tariff rates to Armenia, Belarus, Kyrgyzstan, or Russia, as required by the EAEU.

In 2018, Kazakhstan's Most Favored Nation (MFN) applied tariff averaged 7.1 percent. Kazakhstan applies a zero percent rate on approximately 1,900 tariff lines, including livestock, pork, fish products, chemical and pharmaceutical products, cotton, textiles, machinery and equipment, medical vehicles, and some types of airplanes. Kazakhstan's simple average WTO bound tariff rate is 10.6 percent for agricultural products and 6.4 percent for non-agricultural products. Kazakhstan's maximum WTO bound tariff rate for industrial products is 19 percent, but not less than 0.68 Euros per cubic centimeter (approximately $0.77 per cubic centimeter), while its maximum WTO bound tariff rate for agricultural products is 50 percent, but not less than 0.75 Euros per kilo (approximately $0.85 per kilo).

In 2010, Kazakhstan established tariff-rate quotas (TRQs) on imports of poultry and beef to meet its obligations under the Russia-Kazakhstan-Belarus Customs Union (CU), which have continued under the EAEU. In 2012, U.S. exporters raised concerns about the trade-limiting effects of these TRQs and the manner in which they were calculated and allocated. In October 2017, Kazakhstan developed new rules for TRQ allocation that establish clear deadlines and delineate authorities among government agencies. The volume of TRQs is expected to remain unchanged, however. Pork is not subject to a TRQ, and the tariff rate on pork is expected to be lowered from the current 30 percent to 25 percent in 2020.

Taxes

In 2016, Kazakhstan introduced a system of electronic invoicing for all payers of the value added tax (VAT) on imports. Since January 1, 2017, all importers and customs clearance brokers have to use the electronic invoicing system.

Goods in Kazakhstan, including imports, are generally subject to a VAT of 12 percent. Importers are expected to declare and pay this tax within a month after shipment. According to the EAEU and Kazakhstan's new Customs Codes, effective January 1, 2018, some importers may obtain deferrals of up to one month for payment of the VAT.

Under the tax code that came into force in January 2018, local producers that operate under a special investment contract signed with the Government of Kazakhstan receive VAT exemptions on the import of raw materials and the sale of finished products.

Also under the tax code, importers of alcohol products are required to pay an excise tax and post a security deposit prior to shipment. This requirement came into force in March 2018 and applies to imports from the EAEU and third countries. The measure unnecessarily ties capital in burdensome administrative procedures.

Nontariff Barriers

Import Licensing

Kazakhstan currently requires import and export licenses for ozone-depleting substances, hazardous waste, drugs and psychedelic substances, products with cryptographic capabilities, human organs, tissues, and blood and its components. Import of pesticides, toxic agents, certain commonplace consumer electronic products, some types of meat, and cane sugar also require licenses.

Import Bans

Occasionally, Kazakhstan will impose bans on the import of Russian gasoline in order to protect the domestic fuel market. The latest was instituted on August 27, 2018 and lasted for three months.

Customs Barriers and Trade Facilitation

Customs administration practices in Kazakhstan remain a substantial barrier to trade. Importers report high costs for customs clearance, a lack of transparency and information from customs authorities, and arbitrary interpretation of customs clearance requirements at the border.

In April 2016, Kazakhstan submitted replies to the Checklist of Issues to the WTO Committee on Customs Valuation. In October 2017, the United States raised concerns that several Kazakhstan provisions may not fully implement the WTO Customs Valuation Agreement and submitted formal questions (G/VAL/W/302). The United States will continue to emphasize the importance of submitting replies to the Checklist of Issues, which is integral to successful implementation of the WTO Customs Valuation Agreement.

Kazakhstan has ratified the WTO Trade Facilitation Agreement (TFA). Developing country members have the option of self-designating as such, and thereby self-determining timelines for implementation and capacity-building needs. Kazakhstan chose to identify as a developing country, and has asserted the need for timelines to implement its commitments, even going so far as to indicate it will require capacity building for implementation of certain commitments.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

An EAEU technical regulation on vehicles, originally approved in 2011 but not implemented until 2017, requires that certain types of imported vehicles install the “Era-Glonass” electronic accident response system, or Kazakhstan’s equivalent “EVAC” system. This requirement applies to new models of vehicles that have not already been approved by EAEU certified laboratories. A list of approved vehicles is available on the website of the EEC; the website also notes that the regulation applies equally to both individuals and companies who import vehicles to EAEU countries. The requirement does not affect cars registered before January 1, 2017. While some EAEU countries use different systems, such as Kazakhstan’s EVAC system, those systems are considered interoperable with the Era-Glonass system. The new rule may impede trade in new models of automobiles and may create more favorable conditions for the EAEU automotive industry.

In 2016, Kazakhstan suggested adding a requirement to the EAEU’s technical regulations on toy safety to set a new, unique standard for determining the age appropriateness of toys based on psychological and pedagogical assessments. Industry representatives expressed concern, noting this approach is not based on an international standard and claiming the requirement may create a significant barrier to EAEU market access as well as increase the cost of doing business. The government of Kazakhstan has developed a new draft regulation that would adopt International Organization of Standards (ISO) standards and plans to re-submit its proposal with this new standard to the EAEU for consideration. The United States continues to engage Kazakhstan on this issue, including on using the ASTM International standard for toys.

Sanitary and Phytosanitary Barriers

Systemic Issues

The United States continues to work with Kazakhstan to encourage improvements to the EAEU sanitary and phytosanitary (SPS) regime and to ensure that Kazakhstan's implementation of the EAEU's SPS measures is consistent with its WTO obligations and is minimally disruptive to bilateral trade. In 2016, Kazakhstan harmonized its SPS measures with the World Organization for Animal Health (OIE), the International Plant Protection Convention (IPPC), and Codex Alimentarius Commission (Codex) standards in cases where Kazakhstan nor the EAEU have established a mandatory SPS requirement.

Agricultural Biotechnology

Kazakhstan continues to enforce CU regulations covering agricultural biotechnology products, which require the labeling of both imported and domestically produced agricultural biotechnology products. As Kazakhstan continues to integrate into the EAEU, it is expected that the policies and views of other EAEU countries will play a greater role in shaping the regulation of agricultural biotechnology in Kazakhstan.

An amendment to the 2003 Law on Seeds Farming restricts new testing and prohibits the commercial growth of genetically engineered seeds. However, biotechnology research may be conducted in laboratory greenhouses, and in 2016, the National Center for Biotechnology (under the Ministry of Education and Science) developed a transgenic breed of cotton with higher pesticide resistance.

In 2012 and 2013, Kazakhstan and Russia both banned the importation of GE-corn NK603 as a result of a published study by a French scientist questioning the safety of that type of GE-corn. The European Food Safety Authority (EFSA) refuted the scientific validity of the study and noted it should not be considered as valid for risk assessment. Russia removed the ban without any public acknowledgement, and Kazakhstan has not made public the status of its ban. Therefore, it is effectively still in place, and no one has attempted to import this line of corn.

SUBSIDIES

The government of Kazakhstan has reported that it subsidizes local automakers by offering retail consumer car loans at lower-than-market rates. From 2015-2018, the government allocated around $140 million from the state budget and the National Fund for this preferential loan program.

According to the Ministry of Agriculture, the annual amount of agricultural subsidies it provides does not exceed 4 percent to 5 percent of total agricultural output, which is lower than the 8.5 percent allowed by the WTO. The government has taken the position that its subsidies are consistent with WTO requirements, including its subsidized purchases and leasing of agriculture equipment, purchases of seeds and fertilizers, investment subsidies, subsidies on insurance and underwriting of loans, and subsidies on consulting and research. The Ministry of Agriculture indicated that, as of 2019, it will not allow subsidies that are allocated proportionally based on crop acreage.

GOVERNMENT PROCUREMENT

The lack of transparency and efficiency in government procurement remains a major challenge for local and foreign companies. In recognition of this, the government is taking some steps to streamline its procurement process. Kazakhstan moved to an electronic procurement system on July 1, 2012. Resident and nonresident companies (if they are registered in Kazakhstan) may participate in electronic tenders once they receive an electronic signature from the Ministry of Justice. Nonresident companies are expected to provide the same information as a resident for being qualified as a potential supplier. The electronic procurement system's performance to date has been poor.

In October 2016, as part of commitments it made during its accession to the WTO, Kazakhstan became an observer to the WTO Committee on Government Procurement. This observer status allows Kazakhstan to participate in meetings of the committee to understand WTO Agreement on Government Procurement (GPA) requirements and procedures. Kazakhstan plans to bring government procurement rules and procurement of quasi-sovereign companies into compliance with the GPA.

In December 2015, President Nazarbayev signed a law on government procurement designed to make tender processes more transparent. The procurement rules under this law came into force in 2016. Pursuant to the law, potential suppliers are able to read and discuss technical statements before a tender and see the documentation and bids of other suppliers. In addition, the law toughened requirements for purchasing from a single vendor and prohibited the transfer of services to subcontractors. However, the law still requires pre-qualification for potential suppliers.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Inadequate protection and enforcement of intellectual property rights (IPR) continues to be an area of concern in Kazakhstan. Kazakhstan implemented new laws throughout 2018 to modernize its IP legal framework. In June 2018, President Nursultan Nazarbayev signed amendments to Kazakhstan's intellectual property (IP) legislation that would streamline registration and enforcement of IPR. In addition, Kazakhstan is currently working with various international organizations to understand how IP can facilitate innovation, and how to improve its legal framework to further that goal. Although the United States acknowledges the efforts Kazakhstan has taken to strengthen its IP laws, the wide availability of pirated and counterfeit goods in Kazakhstan, coupled with weak customs enforcement efforts, remain a concern. Recently, pharmaceutical companies have reported inconsistent application of Kazakhstan's existing IP and commercial laws. Furthermore, the judiciary's lack of technical expertise, particular with regard to patent enforcement, also continues to hinder adequate and effective protection of IPR.

SERVICES BARRIERS

Telecommunications Services

As a result of its WTO accession, Kazakhstan permits full foreign ownership in the telecommunications sector, except for the country's main telecommunications operator, KazakhTeleCom. In order to acquire more than 49 percent of shares in a fixed line telecommunication company, foreign investors must obtain permission from authorized government agencies. This requirement does not apply to the mobile services sector. With respect to mobile services, there are no limits on foreign ownership.

Other Services

Under Kazakhstan's law, foreign insurance companies may operate only through subsidiary companies, and foreign banks may operate only through joint ventures or subsidiary companies registered in Kazakhstan. However, Kazakhstan has agreed to eliminate the establishment requirement and to permit foreign banks to directly own and operate branch offices following a transition period that ends in 2020. Kazakhstan's law also restricts foreign ownership in mass media companies, including news agencies, to 20 percent.

INVESTMENT BARRIERS

Kazakhstan's WTO accession commitments provide for the abolition of local content requirements over time, including with respect to contracts in the oil and gas sector. In November 2015, Kazakhstan adopted legislative amendments to meet the country's WTO accession requirements. Pursuant to these amendments, subsoil use contracts concluded after January 1, 2016, no longer contain local content requirements for goods or requirements to support local producers. For subsoil use contracts signed before January 1, 2016, however, such requirements will still apply until January 1, 2021. The terms of Kazakhstan's accession to the WTO also require that Kazakhstan relax, by January 1, 2021, quotas on the employment of foreign nationals in executive, engineering, and technical capacities. The government continues to recommend to international businesses – particularly those involved in oil and gas production at Kazakhstan's three most important fields – to increase their local content through the hiring of Kazakhstani workers and the purchase of domestic supplies and equipment. Oil and gas service companies seeking to secure work at the country's largest oil fields also report being encouraged to form joint ventures or other consortia with local companies, arrangements that foreign companies believe lead to the creation and strengthening of domestic monopolies, to the detriment of competition among oil service providers.

On April 28, 2018, amendments to Kazakhstan's Expatriate Workforce Quota and Work Permit Rules came into force. The amendments significantly simplified the process for certain foreign nationals to work in Kazakhstan. The previous requirement to obtain permission from local authorities for the appointment of CEOs and deputies of Kazakhstani legal entities that are 100 percent owned by foreign companies was eliminated. In addition, the list of individuals requiring no permission has been expanded to non-Kazakhstani citizens working in national holding companies as heads of structural divisions and non-Kazakhstani citizens who are members of the board of directors of national holding companies.

The Subsoil and Subsoil Use Code, which went into effect June 29, 2018, entitles the government to unilaterally terminate a contract "if actions of a subsoil user with a strategic deposit result in changes to Kazakhstan's economic interests in a manner that threatens national security." The Code does not clarify which "economic interests" may serve as the basis for such termination.

ANTICOMPETITIVE PRACTICES

Assets of the National Welfare Fund and the government-owned holding company, Samruk-Kazyna, account for about 40 percent of Kazakhstan's gross domestic product (GDP). Through share-based ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, including Kazakhstan TemirZholy (the national railway), KazMunayGas (the national oil and gas company), KEGOC (the electrical utility), and their subsidiaries. These enterprises are subject to Samruk-Kazyna's rules for procurement of goods and services, which describe procedures and stipulate criteria for the evaluation of bids. U.S. and other foreign companies, particularly in the oil services field, note that Samruk-Kazyna's resistance to negotiating contract terms (*e.g.,* insisting on an unlimited cap on liability) make it difficult for large international firms to do business with KazMunayGas and other national companies. Potential suppliers, both foreign and domestic, must receive a certificate from the National Chamber of Entrepreneurs confirming their status as local producers of goods or services.

On January 28, 2016, Samruk-Kazyna approved new rules on procurement in order to comply with the GPA. These rules cancel bill-back allowances and other forms of preferential treatment given to local providers of goods and services. However, according to the rules, which came into force in July 2017, only qualified suppliers are eligible to participate in Samruk-Kazyna tenders, and a designated Samruk-Kazyna subsidiary must rank potential bidders on a list of qualified suppliers. Samruk-Kazyna maintains that the selection process will be applied evenly to both local and foreign suppliers.

OTHER BARRIERS

Kazakhstan has a burdensome tax monitoring system. Companies report that the system requires them to employ significant resources to comply with cumbersome rules and frequent audits, and that the enforcement actions taken by tax and regulatory authorities can be unpredictable.

Bribery and Corruption

Corruption at many levels of government and in the judicial system is also seen as a barrier to trade and investment in Kazakhstan, reportedly affecting numerous aspects of doing business in Kazakhstan, including customs clearance, payment of taxes, and employment of locals and foreigners.

Export Bans

In October 2018, the Energy Ministers of Kazakhstan and Russia signed amendments to a December 9, 2010 intergovernmental agreement to lift a ban on Kazakhstan's export of light distillates, kerosene, and gasoline. The 2010 agreement was aimed to ensure that Kazakhstan did not re-export fuel it bought from Russia.

Kazakhstan maintains a ban on the export of lumber and waste paper.

KENYA

TRADE SUMMARY

The U.S. goods trade deficit with Kenya was $279 million in 2018, a 136.9 percent increase ($161 million) over 2017. U.S. goods exports to Kenya were $365 million, down 19.7 percent ($89 million) from the previous year. Corresponding U.S. imports from Kenya were $644 million, up 12.6 percent. Kenya was the United States' 110th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Kenya (stock) was $405 million in 2017 (latest data available), a 7.5 percent decrease from 2016.

TRADE AGREEMENTS

Kenya is a member of the East African Community (EAC) free trade area and customs union, and a member of the Common Market for Eastern and Southern Africa (COMESA) free trade area. As a member of the EAC, Kenya is negotiating the Tripartite Free Trade Area among the EAC, COMESA, and the Southern African Development Community. Kenya ratified the European Union-EAC Economic Partnership Agreement (EPA) in 2016, although the EPA is not yet in force. Kenya ratified the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As of 2017 (latest data available), Kenya's Most Favored Nation (MFN) applied tariff rate averages 12.8 percent for all imported products. Kenya generally applies the EAC Customs Union's Common External Tariff, which includes three tariff bands: zero percent duty for raw materials and inputs; 10 percent duty for processed or manufactured inputs; and 25 percent duty for finished products. For certain products and commodities deemed "sensitive," Kenya applies *ad valorem* rates above 25 percent. This includes rates of 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, 100 percent for sugar, and 50 percent for textiles. For some products and commodities, tariffs vary across the five EAC member states. In June 2018, the EAC granted Kenya a one-year waiver to apply a rate of 10 percent rather than 35 percent on imported wheat. In 2017, Kenya's simple average WTO bound tariff rate was significantly higher at 100 percent for agricultural products and 58.5 percent for non-agricultural products. Kenya's maximum WTO bound tariff rate is 100 percent for both agricultural and non-agricultural products.

The Kenyan government sometimes waives tariffs when domestic agricultural prices exceed certain levels and there is a need to stabilize prices.

Previously, the EAC exempted solar and wind energy products from import duties. However, in June 2016, the EAC narrowed the exemption to only those items related to the development and generation of solar and wind energy. The duties imposed on spare parts and accessories to solar equipment reportedly have had a negative impact on the business operations of solar home system companies, although Kenya has not applied them uniformly in practice. Some stakeholders have expressed concern that the amendment to the EAC's Exemptions Regime is ambiguous because it does not define spare parts and accessories to solar equipment. The Kenyan Finance Bill of 2018 exempted from import duties certain specialized equipment for the development and generation of solar and wind energy, such as deep cycle batteries, for the 2018/2019 budget year.

Taxes

The current Value Added Tax (VAT) Act, adopted in 2013, reduced the number of VAT-exempt items from 400 to 27, purportedly to simplify tax administration, enhance tax compliance, and eradicate a backlog of refunds. The 2013 Act went into effect with few specific guidelines, resulting in uncertainty surrounding the application of VAT rules. The 2015 amendments to Kenya's VAT rules clarified some items that are VAT exempt, including: aircraft engines, aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase.

In 2018, the Kenya Revenue Authority (KRA) exempted from VAT certain facilities and machinery used in the manufacturing of goods, including: nuclear reactors; boilers; machinery and mechanical appliances; electrical machinery and equipment and parts; sound recorders and reproducers; television image and sound recorders and reproducers; and parts and accessories thereof.

In 2018, the KRA imposed VAT on raw material imported for the manufacture of garments and leather specifically related to Export Processing Zones to protect local livestock keepers and producers of raw materials used in tanneries. In September 2018, the KRA also began imposing an 8 percent VAT rate on fuel products including petrol, diesel, jet fuel, and kerosene after ending VAT postponements that had been in place since 2013.

VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds. In September 2014, the Kenyan government commissioned an audit of ballooning VAT refund claims. According to the Kenya Private Sector Alliance, a private-sector trade association, the audit was completed and a substantial amount of VAT refund claims were paid out. The 2017 VAT Regulations , which further implemented the 2013 VAT Act, reduced the number of VAT refund claims. However, it is still not clear how many VAT refund claims are pending or were processed during the 2018 fiscal year.

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the KRA has offered an Alternative Dispute Resolution (ADR) mechanism to provide taxpayers with an alternative, fast-track avenue for resolving some tax disputes.

Nontariff Barriers

In 2017, the EAC introduced the EAC Elimination of Non-Tariff Barriers (NTBs) Act, which is currently under review by Kenya and other EAC partner states.

Quantitative Restrictions

Kenya has a mostly liberalized economy with no price controls on major products, except in the energy sector, where the Energy Regulatory Commission sets downstream prices on gasoline, kerosene, and diesel fuel. Quantitative import restrictions, as drafted, appear limited to products for which environment, health, or safety concerns exist; however, officials at times appear to exercise discretion to apply these restrictions with the objective of protecting domestic industries.

Import Bans

In March 2016, Kenya and other EAC heads of state, in an EAC summit communique, directed EAC partner states to ban the importation of used clothing and footwear to support the development of the EAC's textile and apparel and leather industries. In particular, they directed EAC partner states "to procure their textile and footwear requirements from within the region where quality and supply capacities are available competitively, with a view to phasing out importation of used textile and footwear within three years." In addition, they directed partner states to ensure that "all imported second hand shoes and clothes comply with sanitary requirements, in the Partner States." In June 2016, Kenya doubled the import duty rate on articles of used clothing to $0.40/kg or 35 percent *ad valorem*, whichever is higher, as a first step to implement the import ban. According to the Secondary Materials and Recycled Textiles Association (SMART), an industry association, Kenya is an important market for U.S. exports of used clothing. SMART estimates that at least 40,000 U.S. jobs in collection, processing, and distribution would be negatively impacted once Kenya and other EAC partner states fully implement the ban on imports of used clothing and footwear. In July 2017, Kenya reverted the import duty rate on articles of used clothing to the pre-June 2016 rates of $0.20/kg or 35 percent *ad valorem*, whichever is higher, in response to stakeholder concerns. In 2018, Kenya continued to apply the pre-June 2016 import duty rates.

Customs Barriers and Trade Facilitation

Kenya requires all importers to pay an import declaration fee of 2.25 percent of the customs value of imports and to meet other document requirements or their goods will be subject to rejection or enhanced inspection. One critical document that importers must obtain is a Certificate of Conformity (CoC) from a government-appointed pre-shipment inspection company. The government-appointed pre-shipment inspection companies contracted to inspect and certify imports from the United States are Société Générale of Surveillance (SGS), Intertek International Ltd., and Bureau Veritas. If an importer does not obtain a CoC, its goods may be given the option of inspection at the port of entry, or may sometimes be rejected by the Kenya Bureau of Standards (KEBS) and returned at the shipper's expense. If the goods are permitted inspection at the port of entry, the cost of inspection is approximately 15 percent of the total value of imported goods and there remains a risk the goods could still be rejected by KEBS after the payment of shipping costs in the event the goods are determined to be non-conforming. After obtaining a CoC or undergoing enhanced inspection, the importer must seek an Import Standardization Mark, a stick-on label affixed to each imported article or its retail packaging, from the Kenya Bureau of Standards. Kenya asserts that its import controls are necessary to address health, environmental, and security concerns.

Kenya has ratified the WTO Trade Facilitation Agreement (TFA). As a developing country Member of the WTO, Kenya availed itself of the implementation flexibilities in Section II of the TFA. However, Kenya has failed to notify its Category B commitments with indicative dates, which were due to the WTO Secretariat by entry into force of the agreement, February 22, 2017, and its Category B definitive dates, which were due February 22, 2018. Kenya also has failed to identify its Category C commitments with indicative time frames, nor has it identified donors or other Annex D providers with whom it is working on implementation as required by the TFA.

SANITARY AND PHYTOSANITARY BARRIERS

Agricultural Biotechnology

On November 21, 2012, pursuant to a Kenyan Cabinet decision and Presidential order, the Kenyan Ministry of Public Health ordered public health officials to remove from the market all foods, feed, and seeds derived from agricultural biotechnology and to ban genetically engineered (GE) food and feed imports. Despite announcing in August 2015 that the Kenyan government would lift the import ban on GE products by October 2015, the government maintained the ban throughout 2018.

Kenya's GE ban has blocked both food aid and commercial U.S. agricultural exports derived from agricultural biotechnology from Kenya. The restriction affects U.S. exports of processed and unprocessed foods and feed ingredients, such as soy, corn, and distiller dried grains. The GE import ban also affects transshipment. Food aid shipments of GE commodities destined for inland east African countries, which would ordinarily enter through the Port of Mombasa, must be diverted to other ports or reformulated with non-GE commodities.

In September 2017, Kenya approved open field trials for GE cotton (MON 15985) and derived varieties, and for GE corn developed for drought tolerance and insect resistance under the Water Efficient Maize for Africa (WEMA) project. While political bottlenecks have slowed the process for dissemination and use of GE corn, the national performance trials for GE cotton began in 2018 and the first commercial cultivation could begin in fall 2019. However, it is unclear how Kenya will import sufficient GE cotton seeds for planting with the GE import ban in place. In addition to cotton, GE Gypsophila (baby's breath) intended for export to the international cut flower market, including the United States, was supposed to be commercialized in 2019 but now appears to be delayed because of uncertain market access in Europe.

The U.S. Government continues to engage the Kenyan government and stakeholders to support the adoption of these technologies and address the challenges.

Meat, Milk, and Poultry Products

Kenya maintains complex, non-transparent, and costly requirements for importation of all meat, dairy, and poultry products including a standardized sanitary certification and a "Letter of No Objection to Import Permit" (no-objection letter) from the Department of Veterinary Services (DVS) under the Ministry of Agriculture, Livestock, and Fisheries. DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and specifically address the market need the import would meet before issuing a no-objection letter. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Although Kenya purports to prohibit imports only on sanitary grounds, importers have reported that, in practice, DVS has at times provided them with other rationales for denying permits, such as the local availability of a certain product, although DVS has never formally provided this guidance in writing to the permit applicant.

Plants and Plant Products

Since 2006, Kenya has banned wheat from the U.S. Pacific Northwest. Kenya has indicated that the reason for the ban is related to concerns over the flag smut fungus. This fungus poses low risk due to extremely low pest prevalence, lack of a clear pest pathway in grain for consumption, and agronomic practices implemented by U.S. exporters. Additionally, Kenya's climate is generally not conducive to the development of this disease. The U.S. Department of Agriculture and its Animal and Plant Health Inspection Service continue to seek opportunities to engage the Kenyan Cabinet Secretary for Agriculture and the Kenya Plant Health Inspectorate Service to resolve this issue.

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. The aflatoxin limit is lower than the Codex Alimentarius Commission and U.S. standard of 20 ppb. Further, most U.S. corn has a moisture content higher than 13.5 percent. As a result, most U.S. exports are denied permits for importation. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For

U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive compared with corn not subject to these requirements.

Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

Kenya does not permit whole pea imports due to concerns about the *pseudomonas pisi* fungus but permits the import of split peas. Kenya also bans bean imports due to the occurrence of *corynebacterium flaccumfasciens* bacteria in some parts of the United States. Lentils are banned due to the threat of darnel weed; however, darnel weed already exists in Kenya.

GOVERNMENT PROCUREMENT

In May 2015, President Kenyatta announced an initiative dubbed "Buy Kenyan Build Kenya" to require state ministries, departments, and agencies to procure at least 40 percent of supplies locally. Policy guidance to implement this initiative was still pending as of 2018.

U.S. firms have had limited success bidding on government tenders in Kenya. There are widespread reports that corruption often influences the outcome of public tenders, and many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms. All Kenyan tenders and procurement are required to be undertaken through the Integrated Financial Management Information System (IFMIS) as of January 2019. In 2014, the government inaugurated the IFMIS, which the government claims will improve transparency and accountability in government financial management through the automation of budget, accounting, procurement, and revenue management functions. As part of IFMIS, the government launched an electronic procurement system to automate tenders. In July 2015, the government made use of the electronic procurement system mandatory for national and county government institutions, but subsequently suspended the system due to complaints about lack of connectivity. In December 2016, the National Treasury announced the allocation of approximately $76 million to maintain, upgrade, and address challenges with IFMIS. In 2017, a number of counties were still unable to use IFMIS due to lack of connectivity and central control shutdowns. Moreover, IFMIS still has security gaps that make it prone to manipulation. IFMIS vulnerability includes the duplication of authorized users' identities and ability of non-users to have remote access. The 2017-2018 fiscal year budget allocated $1.5 million for continued rollout of IFMIS to counties.

In January 2016, the Public Procurement and Asset Disposal Act came into force, operationalizing Article 227 of the 2010 Constitution and reserving procurement preferences for firms owned by Kenyan citizens and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than Ksh 50 million (approximately $487,000), the preference for Kenyan firms and goods is exclusive. Where the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the Act requires a report detailing evidence of an inability to procure locally. The Act calls for at least 30 percent of government procurement contracts to go to firms owned by women, youth, and persons with disabilities. The Act further reserves 20 percent of procurement contracts tendered at the county level for residents of that county.

Kenya is neither a party to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Recently, the Kenyan government has taken steps to improve the protection and enforcement of intellectual property (IP) rights by updating its copyright and trademark legislation, including new amendments that enable recordation of trademarks with customs authorities. However, concerns related to the widespread availability of counterfeit and pirated goods remain. Stakeholders also have raised concerns regarding the widespread distribution of IP-infringing content online, and have identified opportunities for increased collaboration with internet service providers to expeditiously remove or disable access to infringing material residing on their networks.

SERVICES BARRIERS

The Private Security Regulations Act of 2016 restricts foreign participation in the private security sector by requiring that at least 25 percent of shares in private security firms be held by Kenyans.

Insurance

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyans or citizens of the EAC partner states. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to state-owned Kenya Re. These discriminatory restrictions prevent U.S. insurers from fully accessing the Kenyan market.

Telecommunications Services

Private sector participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment for foreign investors. Additionally, licensed telecommunications service providers are required to maintain 20 percent ownership and control by Kenyan persons within four years from the issuance of a license.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

A draft of a Data Protection Bill requires the local storage of personal data, prohibits the cross-border processing of certain “sensitive personal data,” and places strict conditions on the transfer of personal data outside Kenya. The United States remains concerned that, if passed into law, such restrictions on cross-border data flows would constitute a serious barrier to digital trade. Data localization requirements significantly raise costs for firms, especially foreign firms, which are more likely to depend on data centers located abroad. Data localization requirements also blunt the effectiveness of certain cybersecurity best practices and would prevent Kenyans from taking advantage of best-in-class services.

Internet Services

The Computer Misuse and Cybercrimes Act was signed in May 2018, though certain key provisions of the Act remain suspended by Kenya’s judiciary, pending review of a petition challenging the constitutionality and legality of those provisions. Some of the suspended provisions of the Act could limit online access to information and curtail the creation of user-generated content, potentially limiting the ability of some service providers to operate profitably in Kenya.

The East African Legislative Assembly passed the EAC Electronic Transactions Act in 2015. While the Act provides some protection of intermediaries from liability for third party content, it fails to include any counter-notice procedures for a third party to challenge a content takedown request, and removes legal protections if the intermediary receives a financial benefit from the infringing activity. Lack of a counter-notice provision exposes internet intermediaries to business process disruptions as a result of potentially frivolous takedown notices. Removing legal protection for intermediaries that receive a financial benefit from infringing activity could remove an entire class of intermediaries from the scope of liability protections and could result in a general obligation on these intermediaries to monitor internet traffic. Depending on Kenya's implementation of this Act, it could serve as a serious barrier for internet platforms seeking to supply services in Kenya.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Kenya imposes foreign ownership limitations in several sectors, often in combination with local content requirements. For example, the Communications Authority, Kenya's telecommunications regulator, requires 20 percent Kenyan shareholding within three years of receiving a license. The 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring that Kenyans hold at least 25 percent of shares in private security firms. The Kenya Insurance Act (2010) restricts foreign capital investment to two thirds, with no single person controlling more than 25 percent of an insurers' capital. Additionally, in 2015, the government imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies; requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies; and requires large-scale mining operations to offer 20 percent equity on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent "free-carried interest" (free equity stake in capital operations) to the Kenyan government.

The 2011 National Construction Authority Act imposes local content restrictions on "foreign contractors," defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The Act also contains provisions requiring foreign contractors to hire from the local labor market, unless the National Construction Authority determines the necessary technical skills are not available locally. In addition, the Act requires foreign contractors to enter into subcontracts or joint ventures assuring that at least 30 percent of the contract work is done by local firms. Regulations implementing these requirements were in process as of December 2018.

Local Content Requirements

When making initial investments, foreign investors with foreign staff are required to submit plans for the gradual phasing out of non-Kenyan employees. In considering an application for investment, the Kenya Investment Authority reviews the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and government revenues.

Kenya's legislature is considering a local content bill applicable to the oil and gas and other extractive sectors. The bill would require enterprises applying for licenses and project permits to submit a "local content plan" that sets forth specific actions the enterprise will take to give "first priority" to locally produced goods and services, utilize the local workforce, and develop local employment skills. The plan also must include a local research and development plan, a plan for transferring technology to Kenyan firms, and a plan for replacing non-Kenyan employees with Kenyan employees over time. The bill further requires the Kenyan government to "encourage" joint ventures with local firms. The proposed bill gives the Cabinet Secretaries responsible for the extractive sectors a mandate to review and reject applicants' local content plans and to prescribe regulations specifying minimum levels of local content. U.S. business associations have raised concerns over the bill, pointing to its lack of clarity, overlap with the 2016 Mining Act, and the possibility that it could conflict with Kenya's commitments under the WTO. The U.S. Government also has raised concerns with the Kenyan government.

In 2015, the Department of Immigration issued a new directive making it more difficult for non-Kenyans to obtain work permits. In 2018, the Kenyan Ministry of Interior and Coordination began applying additional administrative and policy changes to the work permit process for foreigners wishing to work in Kenya. Foreigners are now required to have an approved work permit before arrival in Kenya, and renewal of work permits must now be submitted at least four months prior to the expiry of their current permits. Using a valid tourist visa while processing a work permit application is no longer allowed. Under the new rules, foreign nationals must apply for alien registration before a work permit can be formally endorsed. These rules have led to long delays in the processing of work permits for foreigners.

State-Owned Enterprises

According to Kenya's most recent notification to the WTO, in 2006, Kenya does not have any state-trading enterprises. However, as of 2013, there were approximately 262 state corporations operating in various sectors of the economy. According to the WTO Secretariat, each state corporation is under oversight of a line ministry, which is responsible for ensuring its proper management.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure to be "strategic" enterprises. As a result, reform and partial privatization of the telecommunications, power, and rail sectors are progressing slowly.

The Kenyan government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, and limits competition with these companies. State-owned enterprises, including Kenya Electricity Generating Company (KenGen), Kenya Power and Lighting Company (KPLC), and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. In July 2016, KPLC changed its internal procurement rules to require that 80 percent of supplies be sourced from Kenyan-registered companies reportedly to encourage foreign suppliers to establishing manufacturing facilities in the country.

Certain parastatals have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed market share; Kenya Seed Company, which has fewer marketing barriers than its foreign competitors do; and the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some state corporations have also benefitted from easier access to government guarantees, subsidies, or credit at favorable interest rates.

Land

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The cumbersome and opaque process required to acquire land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Complicated land transactions procedures, lack of adequate urban planning, and under-investment in land demarcation are exposing investors to the risk of being given fake title deeds or finding a plot with multiple titles and unauthorized sales for those tracts of land. There are some estimates that clear titles are unavailable for about two-thirds of Kenyan land. The 2016 Community Land Bill made it easier for communities to claim title over their ancestral land and receive documentation.

OTHER BARRIERS

Bribery and Corruption

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report they find it difficult to succeed against competitors willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurement tender processes at both the national and county level. The government has not implemented anti-corruption laws effectively. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan government.

The Kenyan government began an anticorruption campaign using the Ethics and Anticorruption Commission (EACC) and Office of the Director of Public Prosecution to open cases against high profile offenders. While some cases brought to light by the EACC have resulted in convictions, no high-profile cases have ended in conviction.

Despite efforts to increase efficiency and public confidence in the judiciary, a backlog of cases and continuing corruption – both perceived and real – reduce the credibility and effectiveness of Kenya's judicial system. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence outcomes in court cases. An Employment and Labor Relations Court exists in Kenya, but it is plagued by long delays in rendering judgments. As such, foreign and local investors risk lengthy and costly legal procedures.

Export Barriers

Under the 2014 Scrap Metal Act, Kenya restricts the export of any form of scrap metal absent authorization by the Ministry of Industry, Trade, and Cooperatives (MoITC) in order to discourage vandalism of infrastructure and to encourage domestic manufacturing that uses scrap metal as an input. The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia, bixa orellana, cashew nuts, and pyrethrum without express authorization from the Cabinet Secretary for Industry, Trade, and Cooperatives. In June 2018, the MoITC introduced an export levy of 20 percent on the approved exportation of copper waste and scrap metal in an effort aimed at encouraging local smelting, enhancing the value of local copper waste, and discouraging black market export of copper cables and wires.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $17.9 billion in 2018, a 22.4 percent decrease ($5.2 billion) over 2017. U.S. goods exports to Korea were $56.3 billion, up 16.6 percent ($8.0 billion) from the previous year. Corresponding U.S. imports from Korea were $74.3 billion, up 4.0 percent. Korea was the United States' 7th largest goods export market in 2018.

U.S. exports of services to Korea were an estimated $24.2 billion in 2017 (latest data available) and U.S. imports were $10.9 billion. Sales of services in Korea by majority U.S.-owned affiliates were $13.6 billion in 2016 (latest data available), while sales of services in the United States by majority Korea-owned firms were $25.7 billion.

U.S. foreign direct investment (FDI) in Korea (stock) was $41.6 billion in 2017 (latest data available), an 8.1 percent increase from 2016. U.S. direct investment in Korea is led by manufacturing, finance/insurance, and wholesale trade.

TRADE AGREEMENTS

United States-Korea Free Trade Agreement

Agreement was reached in 2018 to modifications and amendments to the United States-Korea Free Trade Agreement (KORUS) and a related letter exchange. These modifications and amendments entered into force on January 1, 2019, and included improvements to remove a range of regulatory and non-tariff barriers, including doubling from 25,000 to 50,000 the number of U.S.-origin vehicles per manufacturer per year that may be imported and sold in Korea that meet U.S. safety standards in lieu of Korean safety requirements. Progress also was made on outstanding issues relating to the implementation of KORUS, including agreement by the Korean government to follow certain globally accepted customs-related principles and to establish a working group to address issues related to origin verification.

IMPORT POLICIES

Origin Verification

The United States has worked closely with Korea to resolve issues surrounding onerous verifications by the Korean Customs Service (KCS) for claims of preferential tariff treatment under KORUS and to ensure that U.S. exporters and producers receive the benefits provided for under KORUS. The Department of Homeland Security U.S. Customs and Border Protection and KCS meet regularly to share best practices, exchange views on verification processes, and better align Korean and U.S. customs procedures. The Office of the U.S. Trade Representative continues to hold discussions, including in the KORUS Committee on Trade in Goods, to press for resolution of the verification challenges faced by U.S. exporters. In the context of the 2018 KORUS agreement amendment discussions, Korea agreed to specific systemic changes to its origin verification procedures. These commitments, confirmed through an exchange of letters, also was accompanied by agreement to establish a new KORUS “Rules of Origin Verification Working Group” as an ongoing forum to address traders’ concerns.

Tariffs and Taxes

Korea's Most Favored Nation (MFN) tariff rate averaged 13.9 percent in 2018. Under KORUS, Korea has now eliminated tariffs on more than 95 percent of U.S. manufactured goods exports. Korea has also eliminated tariffs on almost two-thirds of U.S. agricultural exports. U.S. products now entering Korea duty free include: wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other agricultural products receive duty-free access under tariff-rate quotas (TRQs), including: skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay. To increase the competitiveness of the domestic agricultural and livestock industries, in 2018 Korea voluntarily announced duty-free MFN TRQs for the feed grain complex (18 commodities) including corn, soymeal, barley, and oats.

Rice

During the Uruguay Round of multilateral trade negotiations, Korea negotiated a ten-year exception to "tariffication" (the WTO obligation to convert quantitative restrictions to tariffs) for rice in return for establishing a minimum market access (MMA) quota that was set to expire at the end of 2004. In 2005, Korea negotiated a 10-year extension of its exception to the tariffication commitment, along with an increase in its MMA commitment that called for Korea to increase its total annual rice imports over the course of the 10-year extension, from 225,575 metric tons (milled basis) in 2005 to 408,700 metric tons in 2014. The arrangement included country-specific quota commitments to purchase minimum amounts of imports from the United States, Australia, China, and Thailand.

The MMA arrangement expired at the end of 2014, and on January 1, 2015, Korea submitted a proposal to tariffy access for rice, which was formally opposed by the United States, along with Australia, China, Thailand, and Vietnam, effectively blocking Korea's proposed change to its tariff schedule for rice. With special treatment expired and without a new certified tariff schedule, Korea imports 408,700 metric tons of rice annually through a global TRQ. Under the global TRQ, United States market share in Korea in 2015, 2016, 2017, and 2018 accounted for 38 percent, 41 percent, 34 percent, and 39 percent respectively.

In its tariffication proposal, Korea also terminated the MMA-mandated requirement to import a set percentage of the total TRQ as table rice. The United States continues to work closely with Korea on the tariffication process.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals – Act on the Registration and Evaluation of Chemicals

The Registration and Evaluation of Chemicals (K-REACH) Act entered into force on January 1, 2015. K-REACH requires manufacturers and importers of chemical substances to register and comply with annual reporting requirements. The United States has raised a number of concerns, centering on the lack of guidance around implementation, the insufficient time for companies to implement the requirements, and K-REACH's lack of protection for confidential business information. The United States has raised these concerns repeatedly through meetings under KORUS and the WTO Committee on Technical Barriers to Trade.

A low volume exemption from K-REACH applies to companies importing under 100 kg; however, the Ministry of Environment (MOE) proposed changes to the Presidential Decree that would narrow application of low volume exemptions by requiring registration of compounds exceeding 1,000 kg imported country-wide on an aggregate basis. This newly proposed criterion introduces uncertainty to business planning and adds a further compliance burden on chemical importers.

In 2018, MOE proposed an amendment to the Chemical Control Act that requires disclosure of the full composition of chemical mixtures by importers and manufacturers in line with its new "Universal Chemical Tracking System." However, U.S. exporters contend that full composition disclosure fails to protect confidential business information and compliance would be difficult in declaring contents of third-party supplied materials. If U.S. exporters cannot fulfill the requirements, exports to Korea will likely be restricted. The United States continues to urge Korean ministries to base regulations on scientific evidence and will engage Korean authorities as implementation progresses.

Wood Products

In 2014, Korea's National Institute of Forest Service began publishing standards for 11 wood products with no provision for accepting North American standards widely used in the United States, Brazil, Canada, and Chile, which provide 75 percent of the Korean domestic consumption of these products. Although Korea has since accepted U.S. standards for structural plywood, the Korean standard for oriented strand board (OSB), which is based on an International Organization for Standardization (ISO) quality standard for decorative wood (a less expensive wood product), does not include test procedures or analysis that would address engineering values appropriate for construction purposes. The United States continues to urge Korea to recognize the North American standard for structural OSB and to pass the Foreign Quality Inspection Institute Act, which would allow U.S. conformity assessment bodies to become accredited in the Korean market. This would reduce costly duplicative testing and port delays. In 2018, the Korea Forest Service established parameters for recognizing a foreign inspection institute (FQII) and agreed to the recognition of accredited agencies in the United States under the standards meeting the criteria for designation.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Korea's regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology crop varieties is onerous and protracted due to inefficiencies that include redundant reviews and data requests. For example, approval of agricultural biotechnology products requires review by up to five different agencies. Korea has indicated a willingness to continue reviewing and considering adjustments to regulatory inefficiencies. The United States and private industry provided ideas on how to improve the process, and pilot projects were undertaken to test a streamlined process for biotechnology reviews. These initiatives have had little impact, however, as Korea's Living Modified Organisms Act mandates participation by five agencies, limiting the potential for improving the system without legislative changes. The United States will continue to engage with Korea on improving its approval process for agricultural biotechnology.

Beef and Beef Products

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing bovine spongiform encephalopathy (BSE)-related concerns. In 2008, the United States and Korea reached a bilateral agreement to fully reopen Korea's market to U.S. beef and beef products. However, as a transitional measure, U.S. beef and beef products imported into Korea must be derived from animals less than 30 months of age. In addition, processed beef products, including ground beef patties, beef jerky, and sausage are still prohibited for importation. In 2018, the United States exported over $1.7 billion in beef to Korea, making Korea the second largest export market for U.S. beef by value and third by volume.

Market Access Review Process

The United States seeks to resolve sanitary and Phytosanitary (SPS) barriers that limit export of a variety of horticultural products to Korea. Several of these barriers are longstanding, and progress toward market access has been minimal in some cases. The United States will continue to urge Korea to expedite review and resolve market access requests for U.S. horticultural products.

Fruit Market Access

The United States has a number of market access requests pending with Korea's Ministry of Agriculture, Food and Rural Affairs' (MAFRA) Animal and Plant Quarantine Agency, including: expanding access for U.S. blueberries from U.S. states other than Oregon; improvement in the cherry export program; and access for apples, pears and stone fruits. The United States has requested that MAFRA expedite the process for granting access for these products, to the extent possible. The two governments discussed these issues during U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) plant health bilateral meetings in 2018, and during a meeting of the KORUS SPS Committee in November 2018. The United States will continue to press Korea to allow imports of these fruits from the United States.

Maximum Residue Limits

Korea's Ministry of Food and Drug Safety (MFDS) is in the process of shifting to a new positive list system (PLS) for agrochemical residues and veterinary drugs. Under the new system, Korea will no longer allow imports of food containing agrochemical residues unless the substance has been approved for the commodity in question and a maximum residue limit (MRL) has been established. Korea implemented the PLS in December 2016 for tropical fruits, oilseeds, and tree nuts, and for all other plant products on January 1, 2019. Korea also plans to introduce a PLS for meat, poultry, and other animal products but has not yet determined a timeline.

Korea requires the establishment of new import tolerances for agrochemicals and veterinary drugs that previously had MRLs but were not registered for use in Korea, as well as for new substances that do not have any MRLs in Korea. In order to minimize disruption to trade, Korea delayed the elimination of existing MRLs for agrochemicals not registered for use in Korea until the end of 2021. Korea also created several thousand temporary MRLs that will be in effect until review is completed by MFDS or until the end of 2021. The United States has requested a minimum one-year educational period to assist U.S. industry with the PLS transition and has encouraged Korea to defer to the Codex Alimentarius Commission when setting temporary MRLs. The United States will continue to work with Korea to ensure a smooth transition to the PLS.

Potatoes

In 2012, Korea imposed a prohibition on the import of fresh table-stock potatoes from U.S. states in the Pacific Northwest (PNW) due to concerns over "zebra chip" in the region. However, in September 2017, the two countries reached a final agreement to resume exports from the PNW during the 2018 shipping season. Outstanding issues related to the use of Montana and Colorado seed potatoes, however, remain. Potatoes from several other U.S. states still do not have market access due to Korea's requirements related to potato spindle tuber viroid (PSTVd), a disease that is not present in commercial U.S. potato production areas. The United States continues to press Korea on the PSTVd issue.

SUBSIDIES

Industrial Subsidy Policy

Established under the Korea Development Bank Act of 1953, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored local industries. Although the government of Korea began privatizing the KDB in 2009 as part of its reform of the financial sector, the government subsequently decided that the KDB should be a policy lender to support small and medium-sized enterprises (SMEs) and strategic industries. In 2015, the government restored the KDB's role of providing public policy financial support to Korea's industries and companies.

The United States is concerned that the KDB may take action that distorts trade and investment. The KDB is a state-owned enterprise that provides government assistance to favored industries – support that could place foreign competitors at a disadvantage. The United States will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

GOVERNMENT PROCUREMENT

Korea has made commitments to open its government procurement to U.S. suppliers under the revised WTO Agreement on Government Procurement (GPA) and KORUS. KORUS provides U.S. suppliers with significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services compared to the GPA ($100,000 versus the current GPA threshold which is $180,000). KORUS does not cover procurement by Korean sub-central government entities and government enterprises. The GPA, however, provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

Under the GPA, Korea applies a very high threshold for procurement of construction services by sub-central government entities and government enterprises (SDR 15,000,000 or approximately $21 million). This threshold is three times higher than the threshold applied by the United States for similar entities. However, for central government procurements of construction services, Korea and the United States apply equivalent thresholds (SDR 5,000,000 or approximately $7 million).

Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. However, the Korean government requires network equipment procured by government agencies to undergo additional verification in Korea by Korean government authorities, even if the products received CCRA certification outside Korea. Korea's National Intelligence Service (NIS) has managed this process in a non-transparent fashion, without soliciting public comment, and has broadly construed these requirements to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders have raised concerns that Korea is expanding the scope of these requirements (including additional verification) to products not normally considered "security" products, such as routers, switches, and IP-PBXs. The U.S. Government has raised this issue with Korea in bilateral consultations and will continue to work with Korea in 2019, including within the CCRA, to address concerns.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by NIS. NIS certifies encryption modules based only on the Korean ARIA and SEED encryption algorithms, rather than the internationally standardized AES algorithm that is in widespread use worldwide. Some U.S. suppliers have been unable to sell virtual private network and firewall systems to Korean public sector agencies due to this restriction. The United States has urged Korea to ensure that equipment based on widely used international standards has full access to Korea's public sector market.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In general, Korea has a strong intellectual property rights (IPR) protection and enforcement regime. Under KORUS, Korea agreed to strong enforcement provisions for all types of intellectual property and agreed to join key multilateral IPR agreements. Moreover, the Korean government places importance on IPR protection, and Korea is a significant creator of intellectual property. Nevertheless, some IPR-related concerns remain, including in regard to: counterfeit manufacturing and transshipments; geographical indications; collective rights management and statutory license fees for digital musical services; and reported obstacles to civil IPR enforcement. In addition, the United States urges the Korean government to take further steps to ensure that all government agencies fully comply with the Korean Presidential Decree mandating that government agencies use only legitimate, fully licensed software. The United States continues to work with Korea to seek improvements in these areas.

SERVICES BARRIERS

Audiovisual Services / Screen and Broadcast Quotas

In Korea, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time, determined on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and 80 percent for cable and satellite broadcasts. Foreign animation is limited to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts. Foreign-produced popular music is limited to 40 percent of all broadcast music content. Another semi-annual quota limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video and streaming music, are not subject to these legacy restrictions.

Korea maintains a screen quota for films, requiring that any movie screen show domestic films at least 73 days per year.

The Broadcasting Act contains restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. stakeholders, as they diminish the value of such channels in the Korean market.

Professional Services / Legal Services

Over the past seven years, Korea has taken steps to open its legal services market as outlined in KORUS. The first step involved creating a legal status for foreign legal consultants and allowing foreign law firms to open foreign legal consultant (FLC) offices in Korea. The Foreign Legal Consultants Act allowed foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, implemented as of March 15, 2014, allowed FLC offices to enter into "cooperative agreements" with Korean firms to be able to jointly deal with cases where domestic and foreign legal issues are mixed. The third stage, implemented March 15, 2017, allowed foreign licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

However, this third stage, which was implemented through amendments to the Foreign Legal Consultants Act, contains several requirements that are unique to Korea that discourage U.S. companies from starting joint ventures. The Act limits a foreign law firm's ownership of the joint venture to 49 percent and requires the firms composing the joint venture to have been in operation for three years. In addition, it limits the scope of practice of joint ventures. Although the bill allows foreign law firms to operate joint ventures in Korea for the first time, these provisions undermine the legislation's purpose of facilitating trade in legal services between the two countries. The United States continues to urge Korea to review its overall approach to opening the legal services market.

Financial Services / Insurance and Banking Services

To implement its commitments related to the transfer of information under KORUS and the Korea-European Union Free Trade Agreement, Korea adopted new regulations in 2013 governing the outsourcing of data and information technology (IT) facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed by affiliates outside Korea. Stakeholders raised concerns about strict new rules and enhanced penalties governing data privacy under the May 2014 Act on Promotion of Information and Communications Network Utilization and Information Protection. In June 2015, the Financial Services Commission (FSC), taking into consideration most industry concerns, revised its Regulations on Financial Institutions' Outsourcing of Data Processing Business and IT Facilities to: eliminate the approval process for the outsourcing of IT facilities; lift the restrictions on third-party outsourcing or re-outsourcing; establish a broader application of ex post facto reporting requirements to processing consumer or corporate transaction data; and abolish the Financial Supervisory Service (FSS) security review in the application process. Some difficulties remain given substantial consent requirements, such as consent for the specific data to be transferred and the specific purpose for the transfer. Given the impracticality in many cases of obtaining such consent (which applies even when transferring data to related corporate entities), the benefits of these changes are severely limited. The United States continues to urge Korea to resolve this issue and continues to monitor Korea's overall implementation of its FTA commitments in financial services, including with respect to data transfer.

Responding to industry requests, the FSC announced the Plan for Expansion of Cloud Usage in the Financial Sector on July 16, 2018. According to the Plan, the FSC intended to revise some provisions in the Regulations on Supervision of Electronic Finance and the Data Protection Standards for Cloud Computing Services (so-called CCPA Guidelines) by the end of 2018. However, the amendments remain under discussion in draft form. The FSC says the purpose of the amendments is to allow all financial companies and technology firms' cloud usage to develop new products and services with regard to all types of information, including personal credit and personally identifiable information. While U.S. industry welcomed the move by FSC to expand the use of cloud computing services, they raised concerns over restrictions on the use of overseas cloud facilities due to Korea-specific data localization requirements, ambiguous standards for data protection, and overly burdensome monitoring and investigation on cloud service providers. In addition to limiting the flexibility of foreign financial service suppliers, such policies significantly limit commercial opportunities for U.S. data processing firms, particularly when seeking to offer such services on a cross-border basis. The United States will continue to engage with Korea on these important issues.

Franchising Services

U.S. stakeholders have raised concerns for several years about the activities of the National Commission on Corporate Partnership, now renamed the Korea Commission for Corporate Partnership (KCCP), which imposed restrictions on the expansion of some U.S.-owned restaurant franchises and opened proceedings looking into numerous other sectors as well. The KCCP is a partially government-funded organization, created by Korea's National Assembly with a mandate to mediate complaints of unfair or unequal competition between large and small businesses. The KCCP's mission, according to its government-appointed chairperson, is to level the playing field between large businesses and SMEs in two ways. First, it annually issues a "win-win scorecard" on how large businesses co-exist with SMEs. Second, and of most concern for U.S. businesses, the KCCP can "designate suitable industries for SMEs."

In 2013, the KCCP designated the family restaurant sector as reserved for SMEs. This imposed restrictions that affected U.S. franchising companies in the sector, by forcing them to choose between significant geographic restrictions on the opening of new stores, or accepting a limit of only five new stores a year nationwide for the next three years. In 2014, the KCCP also opened proceedings looking into U.S.-based restaurant chains and systems integration businesses, potentially affecting significant U.S. investors in Korea. The United States has raised concerns about the KCCP's activities and has urged Korea to consider carefully the effect that the KCCP has on Korea's business climate and on foreign investors. In 2015 and 2016, the KCCP had reserved 73 sectors for SMEs; 26 sectors are still on the protection list, while the protection period for 47 sectors expired at the end of June 2018. However, this protection list has not affected U.S. companies. The National Assembly passed another protection law for "mom and pop" stores, the Special Act for Designating Suitable for Micro-businesses, which took effect on December 13, 2018. The United States will continue to monitor KCCP's activities and related laws closely in 2019 and raise concerns where they arise.

Telecommunications Services

Korea prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given current investment restrictions and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market. The United States will continue to raise this issue with Korea in 2019.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

Cross-Border Transfer of Data

Korea's restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside of Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against their Korean rivals, since their locally based competitors typically are not dependent on foreign data processing centers. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data.

To date, Korea has not approved any exports of cartographic or other location-based data. U.S. stakeholders have reported that Korean officials, citing security concerns, are linking such approval to a separate issue: individual companies' willingness to blur satellite imagery of Korea also integrated into their global mapping sites. Korean officials have expressed an interest in limiting the global availability of high-resolution commercial satellite imagery of Korea, but have no ready means of enforcing such a policy since most imagery is produced and distributed from outside of Korea. It is unclear how limiting such availability through specific services (*e.g.*, online mapping) of a particular supplier addresses the general concern, since high-resolution imagery, including for Korea, is widely available as a stand-alone commercial product (and often free of charge), and offered by over a dozen different suppliers. The United States is sensitive to

Korea's national security concerns, but believes that access to Korea's mapping service market through location-based data is a separate issue and will continue to consult with Korea on opening that market to participation by foreign suppliers.

The 2011 Personal Information Protection Act imposed stringent requirements on service providers seeking to transfer customer data outside Korea. The law requires data exporters to provide customers with extensive information about the data transfer, including the destination of the data, any third party's planned use for the data, and the duration of retention. For data transferred to third parties within Korea, less stringent requirements apply. These restrictions pose barriers to the cross-border provision of Internet-based services that depend on data storage and processing services, provided by a company directly or through third parties, and effectively privilege Korean over foreign suppliers in any data-intensive sector without materially contributing to effective privacy protection.

In April 2016, Korea amended its IT Network Use and Protection Act, which imposes stringent protections on the personal data collected and handled by telecommunications and online service providers. The amendments impose significant penalties for violating data protection standards, including heavy fines for telecommunications and online service providers that transfer personal data cross border without consent. Failure to obtain consent results in a fine of up to three percent of the revenue related to the transfer. As with the 2011 Personal Information Protection Act, such requirements appear to discriminate against any suppliers reliant on foreign data storage and processing, and thus raises significant trade concerns. Both of these acts demonstrate a lack of reasonable alternatives to a rigidly implemented policy on consent. This has resulted in Korea being an outlier with respect to privacy policy, a status that could seriously handicap its digital development.

Facilities Localization

The National Assembly passed the Act on Promotion of Cloud Computing and Protection of Users in March 2015. While the Act's passage was generally viewed as a positive development, the subsequent guidelines released by the Korean government, known as the Data Protection Standards for Cloud Computing Services (CCPA Guidelines), have the effect of favoring local cloud computing suppliers to the detriment of foreign service suppliers. The CCPA Guidelines require cloud computing networks serving public sector agencies to be physically separated from cloud computing services consumed by general users, a requirement that has been discredited by security experts for all but the most sensitive applications. Further, these guidelines limit public sector agencies to the use of specific encryption algorithms that are recognized by the government, excluding many widely-used, internationally-standardized algorithms. Under the Korean government's definition, over 10,000 institutions are subject to the CCPA Guidelines, including educational institutions, government-owned banks, and public hospitals. While the CCPA Guidelines are only "recommendations" with no penalty for non-compliance, Korean institutions usually follow such guidelines, thereby restricting market access opportunities. U.S. cloud computing suppliers report that it would not be cost effective for global companies to meet these requirements, leaving Korean suppliers as the only ones willing to meet these standards. The U.S. Government will continue to monitor this issue closely.

Korea maintains facilities localization requirements with respect to payment gateway services, preventing suppliers from leveraging investments in facilities located outside Korea. While ostensibly designed to ensure that payment data remains in Korea for privacy purposes, such a requirement may not enhance privacy protection and is at odds with evolving technologies and services, which increasingly rely on globalized networks.

Electronic Commerce Policies

Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms selling goods in Korean Won have been prohibited from storing Korean customers' credit card numbers in company information systems. U.S. electronic commerce firms continue to sell legally into the Korean market from abroad, setting prices in dollars, but are prevented from accepting Korean-branded credit cards. As a result, U.S. electronic commerce firms that are unwilling to develop Korea-specific payment systems have been prevented from entering the Korean market.

In November 2013, the Korean Financial Services Commission amended regulations to partially address this issue, enabling online digital content stores operating in more than five countries and headquartered abroad to receive "payment gateway" registrations, locate IT facilities offshore, store customer credit card numbers, and allow one-click purchases from mobile devices. This amendment is a positive step that incrementally advances Korean regulation in this area toward global norms. However, U.S. stakeholders have raised concerns regarding slow and unclear implementation of the changes and Korea's variance from global norms on electronic payments.

A related restriction limits foreign electronic commerce suppliers from selling products and services denominated in local currency, the Korean won. By requiring firms seeking to offer won-denominated products and services to register as payment gateways to be able to process such transactions, Korea effectively limits cross-border distribution services, since Korea requires a local entity to hold the payment gateway registration. The United States will continue to raise both these issues with Korea in 2019.

U.S. enterprises have also expressed concerns with respect to requirements regarding value-added tax payments for certain transactions conducted in Korea. The U.S. Government will continue to monitor this issue closely.

INVESTMENT BARRIERS

U.S. investors have on occasion raised concerns about possible discrimination and lack of transparency in investment-related regulatory decisions in Korea, including decisions by tax authorities.

Foreign investment is not permitted in terrestrial broadcast TV operations. For both cable and satellite broadcasting services, foreign participation is limited to 49 percent. Since March 15, 2015 (3 years after KORUS entered into force), Korea has permitted U.S. investors to hold up to 100 percent of the equity interest in a program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable/satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in telecommunications and key services sectors, Korea maintains other restrictions on foreign investment, including a prohibition on foreign investment in rice and barley farming, and a 50 percent foreign equity limitation for enterprises engaged in meat wholesaling; electric power generation, distribution, and sales; and publishing of periodicals other than newspapers. Electronic power generation and enterprises publishing daily newspapers are subject to a 30 percent foreign equity limitation. News agencies are subject to a 25 percent foreign equity limitation.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for SMEs, and restraining the concentration of economic power. In addition to its authority to conduct investigations, including authority over corporate and financial restructuring, KFTC can levy sizeable administrative fines for violations of the laws it enforces as well as for failure to cooperate with investigators. Decisions by KFTC are appealable to the Korean court system. As part of KORUS implementation, KFTC instituted a consent decree process in 2014, which it continues to refine.

A number of U.S. firms have raised concerns that KFTC has targeted foreign companies with aggressive enforcement efforts. U.S. firms also expressed concerns that KFTC's procedures and practices do not comply with Korea's KORUS obligations because they inhibit the ability of companies to adequately defend themselves during investigatory proceedings and hearings. The United States has had extensive discussions with Korea regarding the right of companies to reasonably access and rebut evidence used to determine companies have violated Korea's competition laws.

In December 2018, Korea's government proposed a significant amendment of the Monopoly Regulation and Fair Trade Act to its National Assembly. The proposed amendments do not, however, meaningfully improve the right of investigated companies to gain access to evidence forming the basis of determinations against them. As a result, on March 15, 2019, the United States requested the first ever consultations with the Republic of Korea under the chapter on Competition-Related Matters of the United States-Republic of Korea Free Trade Agreement (KORUS).

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States. As one of the outcomes related to the 2018 KORUS amendment negotiations, Korea committed to complete the harmonization of its emission requirements and testing standards for gasoline engine vehicles with EPA requirements and standards, thereby allowing vehicles exported to Korea to show compliance with Korea's gasoline emissions standards using the same tests they conduct to show compliance in the United States. U.S. automobile exports to Korea increased by over 300 percent from 2011 to 2018, from $419 million in 2011 to $1.7 billion in 2018.

Through the Autos Working Group established under KORUS, the United States urged the Ministry of Environment (MOE) to conduct a mid-term review of its 2016-2020 CO2/CAFE emissions regulations, so that the results of that review will inform policymaker thinking in regard to the anticipated 2021-2025 update. The MOE conducted such a mid-term review in 2018, but has stated that the results will not lead to revisions of existing 2020 targets. Through negotiations that led to the January 2019 implementation of KORUS amendments, Korea agreed to expand the eco-credit cap from 14 grams to 17.9 grams, which is identical to the U.S. cap. Korea also agreed to take global trends into consideration while maintaining more lenient requirements for small volume manufacturers in forthcoming implementing regulations for the 2021-2025 Co2/CAFE standards.

Industry has raised concerns about the Emission Related Components (ERC) modifications and enforcement actions taken against vehicle manufacturers by Korean regulatory bodies in connection with the alleged failure to comply with ERC certifications. Under Korea's Clean Air Conservation Act, vehicle manufacturers and importers are required to obtain MOE modification certifications or prepare modification reports even for unimportant changes. The automobile industry has expressed concern about ambiguity between certification and reporting. Industry contends both requirements are burdensome because import documentation must reflect all changes made by component suppliers before a vehicle arrives in Korea. Automakers also have noted that violations with respect to imports could be subject to criminal investigation by Korean Customs authorities, which lack authority to investigate domestically manufactured vehicles. Automobile importers have called for MOE to revise the regulations to eliminate these trade barriers.

The United States will continue to engage with Korea as MOE continues to clarify its automotive emissions policies to ensure that these policies are implemented in a fair, transparent, and predictable manner, consistent with KORUS.

Pharmaceuticals and Medical Devices

The United States continues to urge Korea to ensure that pharmaceutical reimbursement is conducted in a fair, transparent, and nondiscriminatory manner that recognizes the value of innovation. Nevertheless, the U.S. innovative pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency and predictability regarding Korea’s pricing and reimbursement policies, as well as Korea’s underlying methodology for determining reimbursement rates.

On July 7, 2016, Korea enacted provisions for innovative pharmaceutical companies to apply for “premium pricing” for innovative products, although criteria under the program raised serious concerns of discrimination that favored domestic pharmaceutical companies. As one of the outcomes related to the 2018 KORUS amendment negotiations, Korea agreed to revise the program to remove discriminatory criteria and bring the program into compliance with Korea’s obligations under KORUS. Although amendments made in December 2018 removed discriminatory elements of Korea’s premium pricing system, the revisions to the program’s criteria by the Ministry of Health and Welfare (MOHW) also substantially narrowed the program’s scope in a manner that may dramatically limit the ability of any company, foreign or domestic, to qualify for premium pricing. The United States has urged Korea to make further strides to abide by its KORUS commitment to appropriately recognize the value of patented pharmaceutical products.

Stakeholders in the U.S. medical devices sector also have specific concerns about the pricing and reimbursement system, including insufficient transparency, and lack of meaningful input into product valuation decisions, reimbursement decisions that do not appropriately value innovation, and delays in market approval. With respect to Korea’s implementation of a unique device identifier system for medical devices, stakeholders have identified the importance of ensuring that industry reporting requirements are not extended to pricing information but instead focus on safety-related information. The United States will continue to urge Korea to address these and other issues, as well as to engage meaningfully with industry and improve transparency.

KUWAIT

TRADE SUMMARY

The U.S. goods trade surplus with Kuwait was $896 million in 2018, a 59.6 percent decrease ($1.3 billion) over 2017. U.S. goods exports to Kuwait were $3.0 billion, down 42.0 percent ($2.2 billion) from the previous year. Corresponding U.S. imports from Kuwait were $2.1 billion, down 28.6 percent. Kuwait was the United States' 53rd largest goods export market in 2018.

Sales of services in Kuwait by majority U.S.-owned affiliates were $515 million in 2016 (latest data available), while sales of services in the United States by majority Kuwait-owned firms were $549 million.

U.S. foreign direct investment (FDI) in Kuwait (stock) was $296 million in 2017 (latest data available), a 18.4 percent increase from 2016.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Kuwait’s exceptions include 417 food, agricultural, and pharmaceutical items that are exempt from customs duties.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products. However, as of 2018 not all GCC Member States have implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax. Kuwait introduced supporting legislation in the National Assembly in 2018, where it must be debated in committee.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State as well. Kuwait introduced VAT legislation in the National Assembly, but action on the legislation has been delayed.

Nontariff Barriers

Import Bans and Import Licensing

Kuwait prohibits the importation of alcohol, pork products, used medical equipment, automobiles more than five years old, books, periodicals or movies that insult religion and public morals, and all materials that promote political ideology.

All imported meat requires a health certificate issued by the country of export and a halal food certificate issued by an approved Islamic center in that country.

Customs Barriers and Trade Facilitation

Kuwait ratified the WTO Trade Facilitation Agreement (TFA) in April 2018. Kuwait has availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Kuwait has submitted its Category A notification, that is, commitments that would be implemented upon entry into force, but has not notified the remaining commitments. Kuwait should have notified its definitive dates for implementing Category B commitments in February 2018. Additionally, Kuwait notified two of the four Section I transparency provisions as Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

In December 2017, Kuwait notified its national legislation, which had incorporated WTO provisions on customs valuation. However, Kuwait has not submitted replies to the Checklist of Issues to the WTO Committee on Customs Valuation.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Regulations

Since 2017, U.S. exporters experienced a significantly high rate of rejections of U.S. halal-certified processed beef and turkey products, with Kuwaiti officials alleging trace levels of pork content found in consignments during tests conducted by government laboratories. Although DNA tests conducted by exporters for such consignments at U.S. certified labs prior to export to Kuwait consistently detected no pork content, Kuwaiti officials have refused to accept or take into consideration these tests, resulting in economic losses for U.S. meat suppliers.

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC "G" mark in an effort to "unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers." U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex Alimentarius Commission (Codex), the International Plant Protection Convention, or the World Organization for Animal Health (OIE). As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately $250,000) be conducted through the Central Agency for Public Tenders with the exception of Kuwait Petroleum Corporation contracts up to KD 5 million (approximately $16.5 million). Ministry of Interior, Defense, and National Guard contracts are also exempted. Kuwait provides a 15 percent price preference for domestic goods and a five percent preference for GCC goods, requires foreign contractors to purchase at least 30 percent of their inputs domestically, and to award at least 30 percent of the work to domestic contractors where available.

Kuwait is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2018, Kuwait remained on the Special 301 Priority Watch List in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. While Kuwait passed a new Copyright and Related Rights Law in May 2016 and promulgated implementing regulations in June 2017, there are additional steps Kuwait must take to improve its copyright regime in light of international commitments. Kuwait continues to work with the U.S. Government on drafting a new law to remedy these issues, including the accession to important international copyright treaties.

While the United States acknowledges Kuwait's improved enforcement against IP violations, especially IP enforcement by the Kuwait customs authority, the United States continues to encourage the government to devote additional resources and take action that would have the effect of curbing the distribution and sale of counterfeit and pirated goods.

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Financial Services

Foreign banks were granted licenses to operate in Kuwait under the 2001 Direct Foreign Capital Investment Law. In 2008, the Union of Kuwaiti Banks renamed itself the Kuwait Banking Association and reorganized its membership structure to include all foreign banks operating in Kuwait, which provided foreign banks additional market access via membership in a specialized industry association. Foreign banks are subject to a maximum credit concentration equivalent to 20 times the amount allocated for the branch's operations and are expressly prohibited from directing clients to borrow from their offshore branches or taking any other measures to facilitate such borrowing.

Telecommunications Services

Although Kuwait's telecommunications industry is technically open to private investment, in practice the government maintains extensive ownership in the sector and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content with little judicial oversight. While private mobile communications companies may build cellular towers, the land and permits are often controlled by the Kuwaiti government.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment is not allowed in projects involving oil and gas exploration and production. Although Kuwait allows foreign firms to participate in some midstream and downstream activities in the oil and gas sector, investors in this sector have faced numerous challenges.

The Ministry of Commerce and Industry and the Kuwait Direct Investment Promotion Authority (KDIPA) have been working to streamline the process for foreign investors to obtain commercial and investment licenses, improve regulatory transparency, raise awareness of the importance of foreign investment, resolve commercial disputes that foreign companies have with the government, and improve the country's overall investment climate. KDIPA also provides a legal avenue whereby a foreign corporation may establish a wholly-owned foreign enterprise in Kuwait. Notwithstanding these efforts, major barriers to foreign investment persist. These include: regulations prohibiting foreigners from investing in real estate and publishing; long delays associated with starting new enterprises; difficulty in identifying a required local sponsor and agent; and obstacles created by a business culture heavily influenced by clan and family relationships.

LAOS

TRADE SUMMARY

The U.S. goods trade deficit with Laos was $127 million in 2018, a 79.5 percent increase ($56 million) over 2017. U.S. goods exports to Laos were $15 million, down 41.4 percent ($11 million) from the previous year. Corresponding U.S. imports from Laos were $142 million, up 47.3 percent. Laos was the United States' 193rd largest goods export market in 2018.

TRADE AGREEMENTS

The United States-Laos Bilateral Trade Agreement entered into force in 2005.

Laos is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Laos, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Laos and the other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. Laos is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Laos' applied MFN tariff rate in 2017 (latest date available) averaged 8.5 percent, (8.1 percent for industrial goods and 11.2 percent for agricultural products. There was no change in tariff rates in 2018. Laos' average WTO bound MFN tariff rate will be 19.0 percent when all of its WTO accession commitments come into force in 2023. By contrast, almost all imports from ASEAN member states currently benefit from substantial tariff concessions, with rates of 5 percent or less.

Taxes

Laos has been implementing a value-added tax (VAT) system since 2013. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions. However, uniform implementation of the VAT has been slow and cumbersome, and problems related to VAT payments and refunds are a top concern of the foreign business community in Laos. Laos also has begun to implement excise taxes on some goods, such as vehicles and vehicle fuels, apparently to make up for revenue lost from tariffs reduced under the WTO and ASEAN agreements. U.S. and other foreign businesses have raised concerns to the U.S. and Laos governments about duplicative, arbitrary, or selectively enforced tax provisions.

Nontariff Barriers

Import Licensing and Restrictions

Certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, and timber products are subject to import licensing.

Customs Barriers and Trade Facilitation

The Laos Customs Department determines customs value based on transaction value according to the WTO Agreement on Customs Valuation. However, U.S. exporters have raised concerns about irregularities and corruption in the customs clearance process. In response, in an effort to speed up the clearance process and reduce corruption, in 2016, Laos implemented a new digital payment system for importers called "Smart Tax," which has a direct link to the national treasury. In addition, Laos expanded automated customs processing under the ASYCUDA system (Automated System for Customs Data) to 24 offices throughout the country, and has introduced of a risk management-based approach to the inspection process. The average customs clearance time was reduced from 11.5 hours in 2012 to nine hours in 2017.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

With U.S. Government assistance, Laos continues to work to establish an effective system for civil and criminal enforcement of intellectual property rights (IPR). Although there is increasing public awareness and media coverage in Laos of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries, counterfeit and pirated goods continue to be available in Lao marketplaces. New amendments to the Law on Intellectual Property were signed in December 2017 and took effect when published in the Electronic Official Gazette in May 2018. The amendments transferred resolution of IP infringement cases to the commercial courts, increased transparency with respect to registration of trademarks and patents, and clarified Lao-language legal text to make it more comprehensible to non-specialists.

The United States will continue to engage bilaterally with Laos under the bilateral Trade and Investment Framework Agreement (TIFA) and other dialogues to urge Laos to take steps to improve IPR protection and enforcement, including through joining international IPR agreements, developing judicial capacity to adjudicate IPR cases, and increasing public awareness of the importance of IPR. In 2018, the U.S. Department of State continued sending Lao officials to training organized by the U.S. Patent and Trademark Office.

SERVICES BARRIERS

Foreign services suppliers continue to face difficulties in a number of service sectors in Laos, including financial, medical, postal, and telecommunications services, as well as some leasing, media, and transportation services. Laos opened most other service sectors to U.S. service suppliers through the United States-Laos Bilateral Trade Agreement.

Financial Services

In November 2017, the National Assembly passed the Law on National Payments. The law establishes a new Payment Systems Department in the Bank of the Lao P.D.R. that is responsible for developing a series of decrees to regulate and reform payment systems in Laos, including the possible establishment of a national electronic payments gateway. As of February 2019, no final decrees had been issued, and it remains unclear how the law will be implemented.

Telecommunications Services

No U.S. telecommunications providers are active in Laos due in part to Laos being a saturated market with five telecommunications providers, the small size of the market, and government-set price controls for telecommunication services that limit free competition.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to concerns about corruption, difficulties in enforcing contracts, an underdeveloped judicial system, overlapping and often contradictory regulations, and limited access to financial services. Domestic ownership and partnership requirements vary by industry and administrative processes are often inconsistent or inefficient. The Laos government requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, taxes are often assessed in an unpredictable manner.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Decree 327 on Information Management on the Internet of 2014 creates legal challenges for U.S. Internet services suppliers operating in Laos. Under the decree, “website managers” may be required to actively monitor content posted to their site and may be held legally liable for the content on their site, even if that content was created by a third party. For websites that depend on user-generated content, such as social networks, customer review sites, and online forums, this decree creates legal exposure and uncertainty.

OTHER BARRIERS

Bribery and Corruption

Corruption remains a major barrier for U.S. businesses seeking to operate in or trade with Laos. Informal payments to low-level officials to expedite administrative procedures are common. Laos has taken steps to improve transparency in its domestic lawmaking process, including with the opening of the Ministry of Justice Electronic Official Gazette in 2013. In accordance with the 2012 Law on Making Legislation, drafts of all new laws and regulations must be published on the Gazette for at least 60 days. In 2018, with the support of the United States, the Laos government released a “Lao Law” smart phone app, which allows the public to download a free application that accesses all the laws and regulations found on the Ministry of Justice’s Electronic Official Gazette. This development offers investors, entrepreneurs, and the public a more accessible and user-friendly platform for learning about Lao law. However, not all government agencies post their laws and regulations, and there remain few opportunities for shaping draft legislation.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $26.5 billion in 2018, a 8.5 percent increase ($2.1 billion) over 2017. U.S. goods exports to Malaysia were $12.9 billion, down 0.8 percent ($100 million) from the previous year. Corresponding U.S. imports from Malaysia were $39.4 billion, up 5.3 percent. Malaysia was the United States' 25th largest goods export market in 2018.

U.S. exports of services to Malaysia were an estimated $3.5 billion in 2017 (latest data available) and U.S. imports were $1.8 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $7.0 billion in 2016 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $510 million.

U.S. foreign direct investment (FDI) in Malaysia (stock) was $15.1 billion in 2017 (latest data available), a 3.2 percent increase from 2016. U.S. direct investment in Malaysia is led by manufacturing, nonbank holding companies, and finance/insurance.

TRADE AGREEMENTS

Malaysia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Malaysia, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions, including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Malaysia and the other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. Malaysia is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand. In March 2018, Malaysia also signed the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, but has yet to ratify the agreement. Malaysia is negotiating an agreement with the European Union.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Almost all of Malaysia’s tariffs are imposed on an *ad valorem* basis, with a Most Favored Nation (MFN) average applied tariff rate of 5.7 percent. Duties for tariff lines where there is significant local production are often higher to protect local industry and producers. In general, tariffs are lower for raw materials than for value-added goods. Malaysia charges specific duties on roughly 80 products (mostly agricultural goods) that represent extremely high effective tariff rates. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. Malaysia’s WTO bound tariff rate averages 55.8 percent for agricultural products and 14.9 percent for non-agricultural products. Malaysia’s maximum WTO bound tariff rate varies significantly by product group, for example, from 288 percent for dairy products to 5 percent for petroleum.

The Malaysian government maintains tariff-rate quota systems for 20 tariff lines, including pork, chilled and frozen poultry, milk, rice, and multiple fruits and vegetables. These products face in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as 40 percent to 168 percent.

Taxes

Despite amendments to its excise tax regime for alcoholic beverages in 2016, Malaysia continues to assess a lower excise tax on domestic distilled spirits than on imported products. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size. Domestic auto producers are given credit for local content in excise tax valuation, which disadvantages imports of autos and automotive parts in the Malaysian market.

Nontariff Barriers

Import Licensing

A large number of Malaysian tariff lines related to import-sensitive or strategic industries, principally in the steel, construction equipment, agricultural, mineral, and motor vehicle sectors, are subject to non-automatic import licensing requirements.

Import Restrictions on Motor Vehicles

Malaysia continues to impose import restrictions on automobiles under the Malaysian National Automotive Policy (NAP), which makes a fundamental distinction between "national" cars (*e.g.*, domestic automakers Proton and Perodua) and "non-national" cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of "approved permits" (APs) confers on permit holders the right to import and distribute cars and motorcycles. The AP system is administered in a non-transparent manner and effectively operates as a cap on the total number of vehicles that can be imported in a given year. The cap on imported vehicles is set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector as well as traffic restrictions and noise standards that affect the usage of large motorcycles. In 2018, the Malaysian government announced plans to establish a new national car in production by 2022. If successful, this could further limit market access for imported autos.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Regulations – Meat and Poultry Products

Malaysia's food product standard, MS1500:2009, which establishes guidelines on halal food production, preparation, handling, and storage, imposes requirements beyond those reflected in internationally-recognized halal standards contained in the Codex Alimentarius Commission (Codex). Specifically, the Malaysian standards require slaughter plants to maintain dedicated halal production facilities and ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, the Codex allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. All domestic and foreign meat (except pork) must be certified as halal by the Malaysian authorities or a Foreign Halal Certification Body (FHCB). The halal practices of foreign producers must be inspected and approved for conformity with Malaysian standards before being permitted to export to Malaysia.

To date, Malaysia's Department of Veterinary Services (DVS), in conjunction with Malaysia's Department of Islamic Development (JAKIM), has approved only one U.S. beef plant and one U.S. poultry (turkey) plant for export of halal products to Malaysia.

In a separate but related issue, the United States continues to discuss the approval of U.S. halal-certifying bodies. Only two U.S. Islamic authorities are approved by Malaysia's JAKIM as third-party FHCBs to inspect and certify halal food products in the United States for export to Malaysia: the Islamic Food and Nutrition Council of America (IFANCA) and the Islamic Services of America (ISA). Additional U.S. organizations have applied to become FHCBs.

Halal Regulations - Medical Devices

In August 2017, Standards Malaysia issued a draft standard for halal medical devices (JSM17/ISC/I-01RO) for public comment. The U.S. medical device industry has expressed concern regarding the overly broad scope of the draft halal medical device standard, which does not distinguish between medical devices that contain animal matter and those that do not. Medical device makers worry that this may result in costly halal inspection processes and have also expressed concern that Malaysian authorities will make procurement decisions based on compliance with the standard. A compliance scheme and implementation guidelines for the draft standard have not yet been released.

Distilled Spirits

U.S. stakeholders expressed concern about May 2016 amendments to Malaysia's food and beverage regulations that affect alcoholic beverages. Concerns include a prohibition on the sale of alcoholic beverages that do not fall into standardized product categories, creation of a new product category for "compounded hard liquor" that could be misunderstood by consumers, and the omission of definitions for common internationally traded products. As of late 2018, the Malaysian Ministry of Health was not enforcing the amendments.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Malaysia requires mandatory labeling of food and food ingredients with genetically engineered (GE) content above three percent. However, Malaysia has yet to enforce this regulation. As of November 2018, Malaysia has approved 36 agricultural biotechnology products for market release for use in food, feed, and processing (4 for cotton, 1 for rapeseed, 15 for corn and 9 for soybeans), an increase of 24 percent from the 29 agricultural biotechnology products approved as of the end of 2017.

SUBSIDIES

Export Subsidies

Malaysia maintains several programs that appear to provide subsidies for exports, distinct from the pioneer status and investment tax allowance programs previously listed in Malaysia's subsidies notifications to the WTO. For example, the NAP provides an income tax exemption for high value-added exports of motor vehicles and parts based on the percentage increase in the value added of exports. Moreover, there appear to be a number of other subsidy programs providing tax benefits based on export performance, such as the Income Tax Exemption Based on the Value of Increased Exports and the Deduction for the Promotion of Exports programs, which Malaysia has not addressed in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies through the WTO Subsidies Committee and the WTO Trade Policy Review Body. While Malaysia has promised to make a greater effort to notify all of its subsidy programs, its responses to questions remain incomplete.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement contracts to support national public policy objectives, including encouraging greater participation of Bumiputera (the majority Malay ethnic group) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. As a result, it has generally invited international tenders only when domestic goods and services are not available, and in those cases, foreign companies often find they need to take on a local, Bumiputera-qualified partner before their tenders will be considered.

Malaysia is not a signatory to the WTO Agreement on Government Procurement (GPA), but it became an observer of the WTO Committee on Government Procurement in 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In recent years, Malaysia has taken a number of steps to enhance its intellectual property rights (IPR) enforcement regime. However, concerns remain in a number of areas, such as the availability of pirated and counterfeit goods, unauthorized camera recording of films sourced to Malaysian cinemas, high rates of piracy over the Internet, book piracy, and issues related to pharmaceutical patents. The United States has also urged Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation. In April 2018, the United States initiated a Special 301 Out-of-Cycle Review for consideration of the extent to which Malaysia is providing adequate and effective IPR protection and enforcement, including with respect to patents. Malaysia is in the process of updating its IP laws, in part due to commitments it made for CPTPP.

SERVICES BARRIERS

Audiovisual Services

Foreign investment in cable and satellite platforms is permitted through joint ventures, with foreign equity capped at 30 percent, but there are no foreign direct investment restrictions on the wholesale supply of pay television programming. Malaysia prohibits foreign investment in terrestrial broadcast networks.

Distribution Services

Malaysia allows 100 percent foreign ownership of department and specialty stores. However, larger foreign-owned retailers ("hypermarkets") and locally incorporated direct selling companies must still have 30 percent Bumiputera equity. Malaysia also requires department stores, supermarkets, and hypermarkets to reserve at least 30 percent of shelf space for goods and products manufactured by Bumiputera-owned small and medium-sized enterprises. Malaysia is currently reviewing the guidelines for retailers.

Financial Services

The Financial Services Act of 2013 relaxed the previous foreign equity limits of 70 percent for domestic banks, investment banks, insurance companies, Islamic banks, Islamic investment banks, and Islamic insurance companies. Under the Act, Bank Negara Malaysia (Malaysia's Central Bank) evaluates potential investments in these types of financial institutions based on whether the investment serves the "best interests of Malaysia." As of early 2019, Bank Negara Malaysia had not released specific criteria for foreign investment in financial institutions to qualify under this test.

Even after the Financial Services Act of 2013 was enacted, however, some companies still have been required to reduce foreign equity to 70 percent to remain in the Malaysian market. Bank Negara Malaysia has stated that it intends to be "flexible" as to how companies reduce their foreign ownership stake, and some sources indicate that a greater than 70 percent stake may be allowed, provided that the foreign owner undertakes commitments to assist underserved or poor populations in Malaysia. The United States continues to raise concerns with Malaysia about foreign equity caps and other investment restrictions, including through the administration of the "best interests of Malaysia" test for foreign investment in financial institutions.

Bank Negara Malaysia currently limits foreign banks to eight physical branches in Malaysia and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank. In addition, Bank Negara Malaysia considers automated teller machines (ATMs) as equivalent to separate branches, and it has conditioned foreign banks' ability to offer some services on commitments to undertake certain back office activities in Malaysia.

In September 2017, Bank Negara Malaysia published an "Exposure Draft on Outsourcing" that raised questions concerning data localization in Malaysia. As localization requirements can, in fact, increase exposure to privacy violations and compromise data, the United States encouraged Malaysia to allow financial institutions to utilize global hardware and software systems throughout their worldwide operations, so that they can effectively manage international security and commercial risk. Bank Negara Malaysia re-posted the outsourcing draft for a second round of stakeholder comment in October 2018 and released the final "Policy Document on Outsourcing" at the end of December 2018, with an effective date of January 1, 2019, and a six-month timeline for full compliance. The Bank also included a feedback statement containing responses to public comments on the initial drafts. The Policy Document addresses the management of outsourcing risk; due diligence of service providers and service level agreements; protection of data confidentiality; and business continuity planning. In response to feedback from U.S. firms, Bank Negara Malaysia will permit intra-company (subsidiary) outsourcing, as long as the company to which the work is being outsourced is regulated by either Bank Negara Malaysia or a recognized regulatory institution.

In March 2018, Bank Negara Malaysia issued the Interoperable Credit Transfer Framework (ICTF), which requires that financial institutions process certain types of credit transfers in Malaysia via an approved operator of a shared payment infrastructure. The ICTF, which went into effect on July 1, 2018, includes requirements relating to payment system operators, but no guidelines have been set to define the approval process. In practice, only one supplier (which is partially owned by Bank Negara Malaysia) has been approved as a payment system operator under the ICTF. The final ICTF regulation did not take into account important stakeholder comments, and implementation has been delayed because of technical capacity issues. Since July 2018, Bank Negara Malaysia has been engaging with stakeholders on cloud technology, data flows, and cybersecurity as it assesses policy options to further develop Malaysia's digital economy and establish Malaysia as a center for digital excellence. The United States continues to monitor these developments and has raised concerns in some areas, particularly with respect to requirements that certain transactions be processed and data be stored in Malaysia.

Professional Services

Engineering Services

Foreign engineers are not allowed to operate independently of Malaysian partners or to serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a permanent commercial presence only if all directors are Malaysian.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with the Malaysian Institute of Accountants.

Telecommunications Services

Despite having made only limited WTO commitments in the telecommunications services sector, Malaysia currently allows 100 percent foreign equity participation in a license category of particular interest to foreign suppliers called "applications service providers" (*i.e.*, suppliers that do not own underlying transmission facilities). However, Malaysia has not allowed equal liberalization of the network facilities providers and network service provider license categories. Only 70 percent foreign participation is permitted in those categories, although in certain instances Malaysia has allowed greater equity participation.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to certain restrictions. These restrictions include limitations or prohibitions on foreign equity and requirements that foreign firms enter into joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These authorities may impose conditions on ownership, including maximum thresholds for foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in foreign trade zones.

OTHER BARRIERS

Export Policies

Export taxes

Malaysia is the world's second largest producer and exporter of palm oil and products made from palm oil. Except when there is overstock, Malaysia imposes export taxes on crude palm oil based on fluctuations in the market price to ensure domestic supply and raise revenue. Taxes are imposed when export prices exceed RM 2,250 (approximately $575) per ton and can range from 4.5 percent to 8.5 percent. As of early 2019, the export tax was close to 6 percent of the free-on-board price. Refined palm oil and refined palm oil products are not subject to export taxes. Malaysia also taxes exports of rubber, timber, and metal products in order to encourage domestic processing.

Export Licensing

Malaysia imposes non-automatic export licensing requirements on a variety of products, including minerals and ores.

Foreign Exchange Restrictions

In December 2016, Bank Negara Malaysia announced new foreign exchange restrictions. Under the policy, exporters are required to convert 75 percent of their export earnings into Malaysian ringgit as a means of deepening the market for the currency with the goal of reducing exchange rate volatility. All domestic trade in goods and services must be transacted in ringgit only, with no option for settlement in foreign currency. Bank Negara Malaysia implemented this policy in February 2017. Several U.S. companies confirmed that this policy markedly increased the cost of doing business in Malaysia, and at least one company moved part of its business abroad in direct response to this policy. Bank Negara Malaysia indicated the possibility of granting approval for specific exporters to retain more than 25 percent of their export proceeds on a case-by-case basis; however, little information is available about this process and whether the exceptions are available to all companies. Bank Negara Malaysia has not disclosed how many firms have been granted exceptions under the case-by-case review process.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $81.5 billion in 2018, a 14.9 percent increase ($10.6 billion) over 2017. U.S. goods exports to Mexico were $265.0 billion, up 8.9 percent ($21.7 billion) from the previous year. Corresponding U.S. imports from Mexico were $346.5 billion, up 10.3 percent. Mexico was the United States' 2nd largest goods export market in 2018.

U.S. exports of services to Mexico were an estimated $32.9 billion in 2017 (latest data available) and U.S. imports were $25.5 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $40.9 billion in 2016 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $9.1 billion.

U.S. foreign direct investment (FDI) in Mexico (stock) was $109.7 billion in 2017 (latest data available), a 8.9 percent increase from 2016. U.S. direct investment in Mexico is led by manufacturing, nonbank holding companies, and finance/insurance.

TRADE AGREEMENTS

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico (the Parties), entered into force on January 1, 1994. Under the NAFTA, tariffs on nearly all goods were eliminated progressively, with all final duties and quantitative restrictions eliminated, as scheduled, by January 1, 2008. After signing the NAFTA, the Parties concluded supplemental, and largely unenforceable, side agreements on labor and the environment.

United States-Mexico-Canada Agreement

The United States entered into negotiations with the Parties seeking to update and rebalance the NAFTA in August 2017. The United States-Mexico-Canada Agreement (USMCA) was signed on November 30, 2018 and will replace the NAFTA to better serve the interests of American workers, farmers, ranchers, and businesses.

The USMCA modernizes and rebalances U.S. trade relations with Mexico and Canada to benefit American workers and businesses and reduces incentives to outsource by providing strong labor and environmental protections, innovative rules of origin, and revised investment provisions. The Agreement also brings labor and environment obligations into the core text of the agreement and makes them fully enforceable. The Agreement is a mutually beneficial win for North American farmers, ranchers, businesses, and workers that, once implemented, will create more reciprocal trade with Mexico and Canada, support high-paying jobs for Americans, and help grow the U.S. economy. The USMCA expands U.S. access in Canada for certain U.S. dairy, poultry, and egg products and, once implemented, will help reduce costs and facilitate trade via new commitments on customs inspections, automation, and the treatment of low-value goods. In addition to these achievements, the Agreement upgrades the NAFTA in a number of key areas. For example, the USMCA establishes the strongest and most advanced provisions on intellectual property and digital trade ever included in a trade agreement. Finally, the USMCA also includes a number of ground-breaking provisions to combat non-market practices – such as subsidies and currency manipulation – that have the potential to disadvantage U.S. workers and businesses.

As detailed in this report, despite the NAFTA, a number of outstanding trade-related irritants with Mexico and Canada continue to exist. The USMCA contains a number of provisions that – once in force – are designed to address some of these issues. For example, the USMCA includes obligations to strengthen enforcement against counterfeiting and piracy, camcording of movies, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment. The USMCA also cracks down on data localization measures for services providers and financial services providers and locks in Mexico's telecommunications and energy reforms. The USMCA will also ensure that Canada eliminates its rule prohibiting simultaneous substitution of advertising for the Super Bowl. Finally, under the Agreement, Canada agreed to eliminate milk classes 6 and 7, discriminatory grading of U.S. wheat, and British Columbia's discriminatory treatment of U.S. wine in grocery stores.

IMPORT POLICIES

Tariffs

On June 5, 2018, Mexico adopted tariffs ranging from 7 percent to 25 percent on various products imported from the United States, in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The imports to which the new Mexican tariffs apply include a range of agricultural products, as well as products of steel and aluminum. The United States has urged Mexico to work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American farmers, workers, and businesses. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on July 16, 2018, the United States launched a dispute settlement proceeding against Mexico in the WTO challenging Mexico's retaliatory tariffs.

Nontariff Barriers

Import Licensing

On December 5, 2013, Mexico issued rules requiring importers to obtain a license before certain steel products may be shipped into Mexico; those rules were revised on August 11, 2014. Mexico's stated objectives for the import licensing system is to combat customs fraud, improve enforcement of trade remedy measures, and improve statistical monitoring of steel imports. Because of administrative delays and complicated procedures for the processing of applications by the Ministry of Economy, however, U.S. steel exporters and their Mexican customers have encountered disruptions in supply chains and additional shipment or demurrage costs as a result of the licensing requirement, as shipments may not enter Mexico until licenses are issued. Mexico established an alternative scheme that reduced disruption to steel trade for some U.S. exporters and certain of their customers. However, that scheme was abruptly suspended on December 31, 2018, with no prior notice and no indication as to whether or when it will be resumed. Notification of the suspension has led to confusion and concern on the part of many U.S. steel exporters and their customers in Mexico. The U.S. Government has been actively engaged with Mexico to address stakeholder concerns and to reduce or eliminate the burdens of Mexico's licensing system on U.S. steel exporters and their Mexican customers. The United States also has raised questions about the application of the Mexican licensing program in the WTO Committee on Import Licensing.

Mexico applies several regulations governing the importation of footwear, apparel, and textile goods, including the creation of reference prices and the establishment of an import licensing system. According to the Mexican government, the measures are designed to enhance the productivity and competitiveness of Mexican footwear and apparel producers and protect Mexico's domestic footwear and apparel industries from the importation of undervalued goods. Beginning in December 2018, the Ministry of Economy abruptly canceled automatic import licenses for several U.S. companies based on “inconsistencies” that have not been adequately explained. In addition, U.S. exporters expressed a number of concerns with regard to the schemes, including a lack of transparency in how reference prices are determined and uneven enforcement by Mexico’s customs and tax authorities. The U.S. Government continues to monitor these schemes and encourages the Ministry of Economy and the *Servicio de Administracion Tributaria* (SAT) to clarify how requirements are applied.

Customs Barriers and Trade Facilitation

Mexico ratified the WTO Trade Facilitation Agreement in July 2016. However, U.S. exporters continue to express concerns about Mexican customs administrative procedures, including insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven enforcement of Mexican standards and labeling rules. The U.S. Government continues to monitor the situation and urge SAT to resolve audit cases in a timely and transparent manner.

In the second half of 2016, several U.S. companies expressed concerns about a draft SAT regulation that would impose new requirements on the customs entry process for low-value goods entering Mexico, especially for goods purchased online. The companies expressed concern that these requirements, if enacted, might make it more difficult for companies to use Mexico’s informal entry requirements and increase the time it takes to ship goods to Mexico. At the close of 2018, new regulations had not been adopted. The United States continues to monitor the situation.

Customs procedures for express packages continue to be burdensome. U.S. exporters have highlighted the benefits that could come from harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite delays stemming from the lack of pre-clearance procedures at some of the border crossings. On October 15, 2015, the U.S. and Mexican governments signed a Memorandum of Understanding that allows for the launch of cargo pre-inspection pilot programs. Nine cargo pre-inspection programs are currently in operation.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Information and Communications Technology Safety Requirements

On December 18, 2017, Mexico notified the WTO of its proposal to revise a 1998 technical regulation (NOM-019) that sets safety requirements for certain information and communications technology products, such as servers, data centers, and network devices, among others. U.S. industry is concerned that Mexico may no longer exempt many U.S. information and communications technology exports from the testing requirements and that Mexico would no longer recognize the results of conformity assessment procedures from the United States as meeting the requirements of NOM-019. This revision could potentially affect $24 billion of annual U.S. information and communications technology exports to Mexico.

In 2018, the United States raised concerns about the proposal bilaterally on the margins of the March and June 2017 meetings of the WTO Technical Barriers to Trade (TBT) Committee. In March 2018, the United States sought confirmation that NOM-019 would be based on the International Electro-technical Commission (IEC) standard, and emphasized the need for Mexico to accept U.S. conformity assessment results, renew the exemption for low-voltage products, and include an exemption for Highly Specialized Equipment products.

Energy Efficiency Labeling and Standby Power Usage Regulations

On December 7, 2016, Mexico notified the WTO of its proposed measure from the National Energy Efficiency Commission (CONUEE) (NOM-029), which sets mandatory limits for energy efficiency of external power supplies for electrical and electronic equipment, including test methods and marking. U.S. industry's concerns include certain labeling requirements and unique testing requirements that are different from requirements in the United States or elsewhere.

In 2017, the United States discussed these concerns with Mexico bilaterally and at the three 2017 WTO Committee on TBT meetings. On September 22, 2017, CONUEE published in the *Diario Oficial* (Mexico's official government gazette) a response to comments received on the draft, and on October 27, 2017, finalized the measure. CONUEE removed the requirements to add a 127 volt mark to the nameplate; to mark products as energy efficiency V, VI, or higher; and, to label external power supplies sold with the final product. CONUEE also allowed flexibilities on labeling for external power supplies sold to the public. The industry remains concerned about unique testing requirements, which may require local testing, and the number of product families that require testing. CONUEE agreed to review NOM-029's impact on industry six months after implementation, but did not publish a specific study on its impact. Still, CONUEE published a study in 2018 about energy efficiency trends in Mexico that reported Mexican energy efficiency increased due to 31 energy efficiency regulations, including NOM-029. In 2019, the United States will actively participate in the review of remaining issues as well as any activities related to the alignment of conformity assessment procedures.

Alcoholic Beverages

The final Mexican Official Standard NOM-199-SCFI-2017, Alcoholic Beverages-Denomination, Physicochemical Specifications, Commercial Information and Test Methods, published on October 30, 2017, included some positive changes from the draft on which the United States and U.S. industry submitted comments, such as a clarification of the standard of identity for bourbon and removing the restriction on alcohol by volume for Sambuca. Nonetheless, U.S. industry continues to have significant concerns with the final regulation. Concerns from the spirits industry include ageing requirements, minimum and maximum limits for various components, alcohol content limits, as well as minimum spirit content requirements for certain labels. The wine industry also has expressed concern about Mexico's approach to measuring methanol.

Further, on August 27, 2018, Mexico notified its Draft Conformity Assessment Procedure for Mexican Official Standard NOM-199-SCFI-2017: Alcoholic Beverages – Designations, physiochemical specifications, commercial information, and test methods. While the United States strongly supports Mexico's objective of managing the public health challenges associated with adulterated alcohol, the draft regulation appears to place several new testing and documentation requirements on imports despite the lack of concerns about illicit or adulterated alcohol being sourced from the United States. The United States discussed the draft conformity assessment procedure measure with Mexico in March 2018. In response to U.S. concerns about the draft measure's lack of clarity, Mexico indicated that it was considering additional testing for wines and certification for spirits. In June 2018, the United States expressed its concerns regarding these additional measures, as they could negatively affect U.S. exports of wine and spirits.

In 2018, the United States had $233 million in domestic exports of alcoholic beverages to Mexico. U.S. exports were dominated by beer at $152 million, followed by spirits at $54 million, and wine at $20 million. The United States also exported $7 million in other alcoholic beverages.

The United States will continue to monitor implementation of NOM 199 and any additional testing and certification requirements for wine and spirits, and will engage with Mexico on any other proposed measures related to conformity assessment procedures for alcoholic beverages.

Plumbing Fixtures and Fittings

On June 13, 2016, Mexico notified the WTO of its proposed measure from the Ministry of the Environment and National Resources, PROY-NOM-012-CONAGUA-2015 (NOM-012) on Taps, Cocks, Valves and Other Appliances for Hydraulic Drinking-Water Installations. This proposed regulation governs testing and certification procedures for various plumbing fixtures and fittings. U.S. industry submitted comments to the Mexican government on August 5, 2016.

In 2017, the United States raised concerns about the draft bilaterally and at the November 2017 meeting of the WTO TBT Committee. The Mexican government addressed one of the U.S. industry's concerns by changing the transition period to implement the final regulation from six months to one year. However, industry representatives remain concerned about the unusually large number of samples required for product certification and certification renewals.

The final measure is pending Mexican congressional review, and may be issued in 2019. The United States will continue to monitor the measure's finalization and implementation.

Sanitary and Phytosanitary Barriers

Fresh Potatoes
Mexico prohibits the shipment of U.S. fresh potatoes beyond a 26 kilometer zone along the U.S.-Mexico border. In 2003, the United States and Mexico signed the Table Stock Potato Access Agreement, which provided a process for allowing U.S. potatoes access to the whole of Mexico over a three-year period. However, Mexico has refused to move forward with implementation of the Agreement, citing pest detections in shipments. In 2011, the North American Plant Protection Organization (NAPPO) released a report that identified six pests, which should be considered quarantine pests by Mexico in "potato[es] for consumption." The NAPPO report and recommendations were accepted by both the United States and Mexico. On May 19, 2014, Mexico published new import regulations for potatoes in the *Diario Oficial*. These new regulations would allow the importation of U.S. potatoes into any part of Mexico. The Mexican Potato Industry Association, CONPAPA, challenged the 2014 import regulations in Mexican courts.

On July 15, 2016, the Peña Nieto Administration issued decrees to reinstate U.S. fresh potato access to areas beyond the 26 kilometer border zone, superseding the 2014 regulations issued by Mexico's Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA), which CONPAPA had blocked with 10 court injunctions. However, CONPAPA sought and obtained from Mexican courts three new injunctions against these decrees as well.

In September 2016, SAGARPA agreed to finalize a revised pest risk assessment (PRA), which was published in December 2016. On August 4, 2017, and again in June 2018, a Mexican court issued another ruling to prohibit imports of U.S. potatoes beyond the 26-kilometer border zone. In late October 2018, the Supreme Court of Mexico agreed to address the appeal of the June 2018 ruling. The U.S. Department of Agriculture (USDA) and USTR, in consultation with the U.S. potato industry, continue to seek a solution that would lead to expanded market access for U.S. potatoes to all of Mexico. The remaining legal challenges are ongoing.

Stone Fruit

Mexico has stated that, due to concerns about the oriental fruit moth, it would only accept peaches, nectarines, and plums from the Pacific Northwest if producers allow on-site inspection and used methyl bromide fumigation. Mexico indicates that this will continue until it completes its ongoing pest risk assessment for a systems approach method, which could allow importation from this region without regular on-site inspections or fumigation. Stone fruit from the Pacific Northwest poses a low risk of transmission of the oriental fruit moth. The United States continues to engage with Mexican authorities to reduce burdens associated with the exportation of stone fruit from the Pacific Northwest to Mexico.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2018 Special 301 report. As described in that report, obstacles to U.S. trade in intellectual property-intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and virtual markets. The online availability of copies of new-release movies sourced from Mexico is a particular concern. Overall criminal enforcement of intellectual property rights (IPR), including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of long-term sustained investigations targeting suppliers of counterfeit and pirated goods and services; and the lack of sufficient penalties to deter violations. The United States has identified the Tepito market in Mexico City and the San Juan de Dios market in Guadalajara as notorious markets selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in April 2018, Mexico and the European Union (EU) came to an agreement in principle on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains highly concerned about Mexico negotiating product-specific IP outcomes as a condition of market access from the EU, and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. Mexico recently created a *sui generis* system of protection and Mexico's new registration system for future GIs includes certain elements aimed at improving and respecting due process and transparency.

The United States continues to work closely with Mexico to make progress in addressing other trade-related IP issues, and these efforts have resulted in some significant progress. In 2018, Mexico amended the Industrial Property Law again by further strengthening the trademark opposition system and by creating a ground for refusal, opposition, and cancellation based on bad-faith trademark application filings. In 2018, Mexico also re-established enforcement officials' authority to accept cases involving suspected counterfeit goods in transit through Mexico.

SERVICES BARRIERS

Audiovisual Services

Pay television is an important outlet for foreign programmers and continues to be subject to more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. In 2014, Mexico reformed the Telecommunications and Broadcasting Law to establish advertising guidelines on all media platforms, including radio, broadcast television, and pay television. Despite ambiguity in the 2014 law, television programmers have been allowed to continue the industry practice of inserting up to an average of 12 minutes per hour for advertising without exceeding 144 minutes per day. A change in regulatory interpretation could reduce the television programmer's flexibility in meeting the requirements under the law. Free-to-air broadcasters are not limited to a number of minutes per hour and are permitted to devote as much as 25 percent of air time to advertising each day.

Historically, foreign investment in the broadcasting sector was prohibited in Mexico, but the 2014 telecommunications reform allowed for foreign investment of up to 49 percent. However, actual investment is limited to the share permitted for Mexican broadcasting investment in the company's country of origin. To further reduce barriers related to competition, Televisa was declared a "preponderant agent" in the free-to-air television broadcasting market and is therefore subject to tougher regulation, including the requirement to share its broadcasting infrastructure with competitors.

Telecommunications

A number of important, longstanding market access barriers were removed by a sweeping reform of the telecommunications sector in 2013 and 2014. These barriers included limitations on foreign investment in telecommunications and broadcasting, a weak regulatory agency, and an uncompetitive market dominated by a near-monopolistic player. The telecommunications reform addressed these issues by removing all caps on foreign investment in the telecommunications sector; instituting a new, strengthened, and independent regulator; creating specialized telecommunications courts; and implementing asymmetric regulations to curb the dominance of any company with more than a 49 percent market share.

The removal of these barriers has produced positive results. Due to the improved business climate and new openness of the sector, in 2015 AT&T acquired mobile providers Iusacell and Nextel Mexico, becoming the country's third largest carrier, and announced aggressive infrastructure investment plans. Furthermore, consumer prices in the wireless sector have continued to decline. In fact, according to information released by the *Instituto Federal de Telecomunicaciones* (IFT) (Federal Telecommunications Institute), by the end of 2017, consumer prices fell 41 percent from levels in 2013, when the reform was enacted. The quality of service and carrier accountability also have improved. According to IFT's statistics report for 2018, Mexico's mobile connection base reached 114 million, or 92 percent of the population. Despite the improved regulatory framework, however, new market entrants must still compete with the traditional dominant supplier, which has maintained a market share well above 60 percent. There has been no significant change in the relative market shares of Mexico's three main carriers in the last three years.

Some U.S. companies also have expressed concern that difficulties persist in the efficient deployment of the telecommunications infrastructure necessary to provide comprehensive and high quality services. Permits to install infrastructure such as cell sites must be obtained at a municipal level, and the criteria to obtain these permits vary greatly among local governments. U.S. companies have reported a lack of transparency in the decision making process. The *Secretaria de Comunicaciones y Transportes* (Mexican Ministry of Communications and Transportation) and IFT continue to develop a voluntary national framework for issuing these permits, which will include incentives for municipalities to adopt the national framework. A draft of these guidelines has not yet been released.

INVESTMENT BARRIERS

While the Mexican government retains ownership of subsoil resources, Mexico's 2013 energy reform allows private companies to explore and extract hydrocarbons and participate in downstream operations, including refining, petrochemicals, transport, retail, and supply, subject to local content requirements. Local content requirements vary by location and phase of project and are updated by the Secretariat of Economy. Per regulations published in 2017, for on-land activities, exploration and evaluation work require a minimum average local content of 26 percent. For development phase land projects, the local content requirement was 27 percent in the first year, increasing to 38 percent by 2025.

For unconventional work, the local content requirement is 26 percent for the exploration phase and 24 percent for the evaluation phase, while for development phase activities the requirement is 21 percent for the first two years, gradually increasing to 35 percent by the eighth year of development. For shallow water work, the local content requirement is 15 percent in the exploration phase and 17 percent in the evaluation phase, while for development activities the requirement is 25 percent in the first year, gradually increasing to 35 percent by 2025. Local content requirements in deep and ultra-deep water activities are lower than those established for shallow waters and onshore contracts because of the complexity and technology requirements. For deep and ultra-deep water activities, the Secretariat of Economy has set the minimum local content requirements at three percent in the exploration phase for the initial four years, six percent for the next three years of exploration, and eight percent for the following three years of exploration. For development phase activities, the minimum local content requirement is four percent, while for production phase activities the requirement is 10 percent.

Entitlements and exploration and production contracts include specific penalties for failure to comply with local content requirements.

Mexico's hydrocarbons law restricts the ability of foreign investors to use international arbitration to resolve certain types of disputes with the government. For investors seeking to resolve such disputes, the only available forum is the Mexican court system.

Consistent with his campaign promise, President Lopez Obrador cancelled oil auctions for three years but reassured companies that contracts awarded under the previous administration as part of the 2013 energy reform would be respected.

Certain other sectors or activities, such as ground transportation services and transportation infrastructure, (such as airport management), are closed to foreign participation. Under the Foreign Investment Law, foreigners may wholly own a Mexican freight motor carrier company, but are restricted to carrying only international cargo; foreign ownership is capped at 49 percent for express delivery companies. Mexico also prohibits foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). Under the Foreign Investment Law, foreigners can invest up to 49 percent in land for agricultural, livestock, and forestry purposes if they are not in the previously mentioned excluded areas. An interagency *Comisión Nacional de Inversiones* (National Foreign Investment Commission) reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and for which the value exceeds $165 million (adjusted annually).

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $1.4 billion in 2018, a 39.8 percent increase ($393 million) over 2017. U.S. goods exports to Morocco were $2.9 billion, up 32.7 percent ($725 million) from the previous year. Corresponding U.S. imports from Morocco were $1.6 billion, up 27.0 percent. Morocco was the United States' 54th largest goods export market in 2018.

U.S. exports of services to Morocco were an estimated $634 million in 2017 (latest data available) and U.S. imports were $832 million. Sales of services in Morocco by majority U.S.-owned affiliates were $201 million in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Morocco (stock) was $412 million in 2017 (latest data available), a 5.1 percent decrease from 2016.

TRADE AGREEMENTS

The United States-Morocco Free Trade Agreement

The United States-Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006, eliminating duties on 95 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over the subsequent 10 years and eliminated as of January 1, 2015. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, such as tariff-rate quotas (TRQs). Goods from key U.S. export sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty-free or other preferential duty treatment when entering Morocco. In addition, the USMFTA includes commitments for increased regulatory transparency and the protection of intellectual property rights (IPR) as well as the maintenance of labor and environmental laws.

IMPORT POLICIES

Morocco has undertaken reforms to liberalize its economy as a World Trade Organization (WTO) Member and as a party to several bilateral free trade agreements, including the USMFTA and an association agreement with the European Union (EU), its single largest trading partner. In order to further boost the flow of bilateral trade, the United States and Morocco signed a bilateral trade facilitation agreement in November 2013. The agreement includes commitments reflecting practices developed since the USMFTA was signed in 2004 that facilitate the movement of goods. It includes provisions on automation, transit, Internet publication of customs regulations and procedures, transparency with respect to customs penalties, and other initiatives that will improve Morocco’s environment for trade in goods.

Tariffs

Pursuant to the USMFTA, Morocco maintains a number of TRQs, including for U.S. durum and common wheat, beef, and poultry exports. At the October 2017 Sanitary and Phytosanitary (SPS) and Agriculture Sub-Committee meeting of the USMFTA Joint Committee, Morocco committed to ensure that common wheat quota tenders are delivered from January through May 31, and no later than August 1 through December 31, as prescribed in the USMFTA. If volumes are unassigned or unshipped from the first tender of the calendar year, or if the calendar year quota was determined to be larger than 400,000 MT following the summer harvest, the remaining balance (total volume owed minus volume shipped) will be re-tendered.

Morocco also agreed to retender unused volumes if the duty was lowered mid-season. In 2018, Morocco was late in issuing the fall durum tender, and did not announce the common wheat tender. The United States and Morocco have engaged to remedy this issue.

At the October 2017 SPS and Agriculture Sub-Committee meeting, Morocco also committed to honoring its commitments under the USMFTA to accelerate tariff phase-outs on approximately 40 tariff lines of wheat, beef, and poultry products if Morocco applies a lower duty to EU products. On December 28, 2018, Morocco issued a customs circular that enforced Morocco's accelerated tariff phase out for several products subject to the preference clause. The circular also contained the 2019 TRQ amounts and updated tariff rates for U.S. poultry, beef, wheat, and almonds.

Finally, Morocco last notified its levels of agricultural domestic support to the WTO for the year 2007 and agricultural export subsidies for the year 2011. Morocco appears to provide high levels of domestic support for its wheat production. Morocco also appears to subsidize agricultural exports to the United States. The U.S. Government has raised these issues with Morocco.

Nontariff Barriers

Customs Barriers and Trade Facilitation

U.S. firms have raised concerns with a lack of efficiency and transparency in customs procedures. Some U.S. companies have cited Morocco's approach to customs valuation and Morocco's requirement of a certificate of non-manipulation for goods in transit as impediments to the clearance or movement of their shipments and as potentially inconsistent with USMFTA requirements.

The United States and Morocco signed a bilateral Trade Facilitation Agreement on November 21, 2013 (entry into force was immediate).

Although Morocco has not yet ratified the WTO Trade Facilitation Agreement (TFA), it has availed itself of the flexibilities for developing countries contained in Section II of the TFA. Morocco designated 91 percent of the commitments in Section I of the TFA as Category A, meaning that they would be implemented by Morocco upon entry into force of the TFA on February 22, 2017. However, even though Morocco designated three of four Section I transparency provisions as Category A, it has yet to provide relevant information about those provisions to the WTO Secretariat.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In July 2016, the Moroccan government issued an implementation decree that allows for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards (FMVSS). Previously, only automobiles meeting the United Nations Economic Commission for Europe vehicle standards were allowed to be imported, effectively barring many automobiles produced in the United States from entering the Moroccan market. However, barriers to automotive trade persist. Although issuance of the implementation decree should have enabled importers to clear customs using self-certification documents to demonstrate compliance with U.S. FMVSS, Moroccan customs has still not adopted a procedure to regularize this process. As a result, importers face uncertainty at the border and delays in release of their merchandise.

Sanitary and Phytosanitary Barriers

At the 2017 meeting of the USMFTA SPS and Agriculture Sub-committee, Morocco committed to finalize export certificates for U.S. beef and poultry products as soon as possible. By December 2018, export certificates for both U.S. beef and poultry products were completed and the market was opened to U.S. exports of beef and poultry. Morocco also upheld its commitment to retain Deoxynivalenol (DON) levels consistent with Codex Alimentarius Commission for wheat import tolerances. Market access negotiations to allow exports of U.S. animal genetics, feed, processed egg products, and seed potatoes continue with Morocco.

GOVERNMENT PROCUREMENT

The USMFTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurements. U.S. suppliers are permitted to bid on procurements by all Moroccan central government entities, as well as procurements by the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers.

Morocco is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

SERVICES BARRIERS

Although Morocco's insurance regulation does not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that in practice the regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Inadequate protection and enforcement of intellectual property (IP) rights continues to be an area of concern in Morocco. Although the United States acknowledges the efforts of Morocco to combat trade in counterfeit and pirated goods, Morocco continues to be a thriving market for these illicit products, particularly unlicensed software. Weak enforcement efforts also have led to rising concerns from U.S. clothing manufacturers over the prevalence of counterfeit apparel, particularly sportswear.

In 2018, the United States and Morocco engaged extensively on matters related to Morocco's policy toward geographical indications (GIs) in light of the pending Morocco-EU agreement on the protection of GIs, concluded in January 2015. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merit.

In 2017, Morocco proposed altering its Pharmaceutical Law 17-04, which would require companies to disclose formulations for their non-generic products to a local manufacturing plant in order to secure market authorizations to manufacture, import, distribute, promote, and sell their products in Morocco. U.S. companies have stated their concerns with the proposed amendment, and the United States will monitor the situation closely.

OTHER BARRIERS

U.S. firms cite irregularities in various government procedures as among the greatest obstacles to trade and investment in Morocco. In particular, companies point to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. Companies also note the challenges created by the need to follow rigid protocols and navigate excessive bureaucracy, which can lead to long wait times, particularly when dealing with public sector entities. Morocco's cumbersome tax and employment regimes and property registration procedures also impede business.

Moroccan restrictions on purchasers that need, or would like, to prepay orders of imported merchandise are often problematic for U.S. exporters that require 100 percent advance payment. Currently, in an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only 30 percent of a shipment's total value in advance of import. A Moroccan company can prepay 100 percent only for orders under 200,000 dirhams (approximately $23,000). Some firms use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. firms report payment delays.

Export Policies

U.S. industry has raised concerns over Moroccan government limitations on exports of Gigartina seaweed used for food processing and other industrial applications. On July 25, 2014, the Ministry of Agriculture and Maritime Fisheries issued an order limiting the harvesting of the seaweed. Roughly one month earlier, the Ministry of Industry, Commerce, Investment and the Digital Economy issued a notice to exporters limiting the export of Gigartina seaweed to 300 metric tons (a decrease of 900 metric tons from pre-2014 export levels). Both harvesting and exports are limited to the same quantities, but in the past the harvest allocation has affected the ability of U.S. firms to secure sufficient quantities of Gigartina for processing. The Ministry of Agriculture and Maritime Fisheries maintained the restrictions through 2018 to monitor for overharvesting. The United States Government has repeatedly raised the absence of a scientific basis for the export restriction with Morocco, including at both the February 2015 and October 2017 meetings of the USMFTA Joint Committee, but the government of Morocco has yet to provide a scientific justification for the quota.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $124 million in 2018, a 47.5 percent decrease ($112 million) over 2017. U.S. goods exports to New Zealand were $4.1 billion, up 3.6 percent ($143 million) from the previous year. Corresponding U.S. imports from New Zealand were $4.2 billion, up 0.7 percent. New Zealand was the United States' 48th largest goods export market in 2018.

U.S. exports of services to New Zealand were an estimated $2.8 billion in 2017 (latest data available) and U.S. imports were $2.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $3.8 billion in 2016 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were $485 million.

U.S. foreign direct investment (FDI) in New Zealand (stock) was $11.9 billion in 2017 (latest data available), a 0.1 percent decrease from 2016.

TRADE AGREEMENTS

New Zealand currently has free trade agreements in place with Australia, Brunei, China, Hong Kong, Korea, Malaysia, Singapore, Taiwan, Thailand, and the Association of Southeast Asian Nations (ASEAN). In 2018, the New Zealand government ratified both the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) with 10 other nations and the Pacific Agreement on Closer Economic Relations (PACER Plus) with nine Pacific Island nations and Australia. New Zealand is currently negotiating free trade agreements with the Pacific Alliance (Chile, Colombia, Mexico, and Peru), the Regional Comprehensive Economic Partnership (RCEP), the European Union, and India. New Zealand has engaged in several rounds of negotiations to upgrade the 2008 New Zealand-China Free Trade Agreement. In November 2018, negotiations concluded on an upgrade to the New Zealand-Singapore Closer Economic Partnership signed in 2000.

IMPORT POLICIES

At two percent, New Zealand has one of the lowest average Most Favored Nation (MFN) applied tariff rates among industrialized countries. New Zealand applies a zero percent duty on an MFN basis on 72.4 percent of its tariff lines in agricultural goods and on 63.3 percent of its tariff lines in non-agricultural goods. In August 2017, the government decided that tariff levels would remain unchanged from their current levels, except where they are reduced through trade agreements.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

New Zealand generally provides strong intellectual property rights (IPR) protection and enforcement. The United States continues to monitor implementation of the New Zealand Patent Act reforms that came into force in September 2014, including provisions related to software.

The United States has encouraged the New Zealand government to accede to and implement the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty. In 2018, the New Zealand Cabinet agreed that New Zealand will become party to both of these treaties, as well as the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. New Zealand acceded to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works in December 2018.

The United States continues to monitor New Zealand's IPR-related legislation, including implementation of international obligations, and to work with New Zealand to address any IPR issues.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The New Zealand Overseas Investment Office (OIO) screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets," which are defined as assets valued at more than NZ$100 million (approximately $67 million). In addition, the OIO screens any foreign investment that would result in the acquisition of 25 percent or more of a fishing quota either directly or through the acquisition of a company that already possesses a quota.

The OIO also reviews the acquisition of land defined as "sensitive" by the Overseas Investment Act 2005, which includes farmland greater than five hectares, land adjoining the foreshore, and conservation land. With respect to the acquisition of sensitive land, New Zealand may assess a number of factors including an "economic interest" factor (whether New Zealand's economic interests are "safeguarded") and a "mitigating" factor (whether an overseas investment provides adequate opportunities for New Zealand oversight or involvement, such as through the appointment of New Zealand directors or the establishment of a head office in New Zealand).

In December 2017, the government tightened criteria for investment in rural land, requiring screening for investment in rural land of five hectares or more. In addition, the government directed the OIO to place particular importance on potential economic benefits, such as increased production and jobs, in its assessment of applications to invest in rural land.

In August 2018, the government amended the Overseas Investment Act to expand the definition of "sensitive land" to include existing residential real estate. Beginning in October 2018, only New Zealand citizens and residence-class visa holders who have spent the majority of their time in New Zealand can purchase existing homes. (Australian and Singaporean citizens and permanent residents have an exemption.) All developers with a degree of overseas ownership still need to apply for consent from the OIO to buy residential land for the purposes of new development. If the residential development includes more than 20 new houses, overseas developers can apply for an exemption certificate and, if approved by the relevant Minister(s), they may not need to seek OIO consent for the development.

OTHER BARRIERS

The Pharmaceutical Management Agency (PHARMAC) determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. In 2013, PHARMAC's role was expanded to include the management of community medicines, pharmaceutical cancer treatments, the National Immunization Schedule, management of all medicines used in District Health Board hospitals, and the national contracting of hospital medical devices. Some U.S. stakeholders have expressed concern about aspects of PHARMAC's regulatory process, including lack of transparency, timeliness, and predictability in the funding process and lengthy delays in reimbursing new products.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $2.0 billion in 2018, a 18.6 percent increase ($311 million) over 2017. U.S. goods exports to Nicaragua were $1.6 billion, up 0.9 percent ($14 million) from the previous year. Corresponding U.S. imports from Nicaragua were $3.6 billion, up 9.9 percent. Nicaragua was the United States' 68th largest goods export market in 2018.

U.S. exports of services to Nicaragua were an estimated $441 million in 2017 (latest data available) and U.S. imports were $614 million. Sales of services in Nicaragua by majority U.S.-owned affiliates were $350 million in 2016 (latest data available), while sales of services in the United States by majority Nicaragua-owned firms were $68 million.

U.S. foreign direct investment (FDI) in Nicaragua (stock) was $187 million in 2017 (latest data available), a 13.8 percent decrease from 2016.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006, for the Dominican Republic in 2007, and for Costa Rica in 2009. CAFTA-DR significantly liberalizes trade in goods and services and includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, labor, and environment.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. Approximately 95 percent of Nicaragua’s tariff lines are at 15 percent or lower. In 2007, in response to rising prices, Nicaragua’s Ministry of Industry Commerce and Development (MIFIC) issued a series of ministerial regulations (073-2008) to eliminate or reduce to five percent the tariffs on many basic foodstuffs and consumer goods. These regulations have been extended every six months since 2007 and are currently in force through June 2019.

Under the CAFTA-DR, as of January 1, 2015, all originating U.S. consumer and industrial goods enter Nicaragua duty free. Nearly all textile and apparel goods that meet the Agreement’s rules of origin also enter Nicaragua duty free and quota free, which is a potential opportunity for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

More than half of U.S. agricultural product exports enter Nicaragua duty free under the CAFTA-DR. Per its obligations under CAFTA-DR, Nicaragua will eliminate its remaining tariffs on nearly all U.S. agricultural goods by 2020, on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff. The Nicaraguan government is required under the CAFTA-DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system; the United States is carefully tracking Nicaraguan issuance of these permits.

Nicaraguan imports of U.S. rice, milled and rough, have declined by over 82 percent since 2012. The Office of the U.S. Trade Representative met with the Nicaraguan Ministry of Trade in 2018 and requested the full implementation of the rice TRQ methodologies under CAFTA-DR. On November 1, 2018, Nicaragua published Ministerial Decree 021-2018 changing the definition of new importers so any individual or company can have access to the unused quotas. Although the government of Nicaragua has yet to apply sanctions for quota license holders who fail to return unused licenses, importers who fail to return unused quota licenses will be limited in the next years TRQ allocations to the amount that they actually imported. While there has been a small increase in use of the rice TRQs, the quantities are still minimal. The trade impact of the improper implementation of the rice TRQ is at least $10 million.

Taxes

The Nicaraguan government levies a "selective consumption tax" of 15 to 42 percent on some luxury items, with a few exceptions such as yachts and helicopters, for which the tax is zero percent. Domestic goods are taxed on the manufacturer's price, while imports are taxed on a cost, insurance, and freight (CIF) value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Under the CAFTA-DR, all of the Parties, including Nicaragua, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including Nicaragua, also committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share with each other information to combat illegal transshipment. However, companies report that difficulties with the Nicaraguan customs authority, including delays, arbitrary valuation of goods, technical difficulties, and corruption, are significant impediments to trade and sometimes result in increased prices to consumers. In addition, U.S. exporters and Nicaraguan importers of U.S. goods have raised concerns about the tariff classification of their goods by the Nicaraguan customs authority and the lack of transparency in customs release procedures. While some traders have been able to resolve their customs issues, the U.S. Government continues to engage Nicaragua on these matters.

There are reportedly significant delays at the border. Six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, meaning importers often experience delays and additional costs if goods have to be stored in Managua while testing is completed.

TECHNICAL BARRIERS TO TRADE

Industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Ministry of Health requires a Certificate of Free Sale for product registration. In some cases, U.S. companies have satisfied the requirement by submitting documents from state or local government authorities or trade organizations. However, U.S. manufacturers cannot gain approval to sell into the Nicaraguan market if they are unable to obtain such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), which requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates as expiration dates and have destroyed products exceeding those dates, even when the product was for re-export. Nicaraguan importers of U.S. products have complained that the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers are now working with suppliers to include expiration dates in the translated Spanish label as required by Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07.10).

SUBSIDIES

Albanisa, the joint venture of the Venezuelan and Nicaraguan state oil companies that imports and distributes Venezuelan petroleum, provides preferential financing to parties that agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods.

Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country (*i.e*., a "developing country") for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The United States will continue to work with the Nicaraguan government to ensure compliance with Nicaragua's CAFTA-DR obligations.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Nicaraguan government entities, including government ministries and sub-central and state-owned entities, on the same basis as local suppliers. The anticorruption provisions in the CAFTA-DR apply, *inter alia*, to government procurement.

Law 935 (2016) requires competitive and transparent bidding procedures for all public-private initiatives and the government has established a portal through which firms can obtain information and bid on public contracts. The portal, however, is not always updated in a timely fashion.

In practice, there are significant practical hurdles that inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan government entities. Under existing law, all government purchases must be planned and approved by procurement committees within each public entity, and published in Annual Procurement Plans. The law also requires a minimum of 30 days from publication of a bid to the deadline for submissions. However, there are concerns that these requirements are not always followed. Terms of Reference and technical specifications are frequently unclear or poorly written. Requirements for financial guarantees and local legal representation create significant challenges for U.S. firms without a local presence or partner. The government of Nicaragua is not reliably responsive to foreign governments raising these issues.

The United States will continue to monitor Nicaragua's government procurement practices to ensure that they are applied in a manner consistent with CAFTA-DR obligations.

Nicaragua is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR IPR obligations, Nicaragua undertook legislative reforms providing for stronger intellectual property rights (IPR) protection and enforcement. Despite these reforms, the United States continues to be concerned about the piracy of optical media, broadcast media, and trademark infringement in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

INVESTMENT BARRIERS

Weak governmental institutions, deficiencies in the rule of law, and extensive executive control can create significant challenges for those looking to invest in Nicaragua, particularly smaller foreign investors. Many individuals and entities raise concerns about customs and tax operations in particular. The U.S. Embassy continues to hear accounts from U.S. citizens seeking redress for property rights violations.

In addition, investors have raised concerns with Law 840 (2013), which specifies that property holders whose land is expropriated or nationalized will receive compensation based on cadastral value (the tax-assessed value of a property established by the national government) rather than on the value determined by the market. The United States will continue to monitor the situation to ensure that the Nicaraguan government fulfills its CAFTA-DR obligations.

OTHER BARRIERS

Bribery and Corruption

Some U.S. firms and citizens report that government corruption, including in the judiciary, is a significant concern and constraint to successful investment in Nicaragua. Administrative and judicial decision-making appear to be inconsistent, nontransparent, and very time-consuming. Courts frequently grant orders (called amparos) that suspend official investigatory and enforcement actions indefinitely, delays that appear intended to protect individuals suspected of white collar crime.

Investors have raised concerns that regulatory authorities are slow to apply existing laws, act arbitrarily, and often favor one competitor over another. Foreign investors report significant delays in receiving residency permits, requiring frequent travel out of the country to renew visas. Investors also have expressed concern about arbitrariness in taxation procedures, as well as the frequency and duration of tax audits of foreign investors. The costs of these barriers vary and the Nicaraguan government is not historically responsive to U.S. government efforts to address them.

Law 891 (2014), which came into effect in 2015, prohibits the importation of vehicles that are seven years or older. There are several exceptions to this prohibition, such as for classic or historic vehicles, certain donated vehicles, and certain vehicles used for cargo or public transportation.

The Nicaraguan Institute of Agricultural Protection and Health (IPSA) issues import licenses for agricultural imports. In some cases, IPSA has made use of its discretion to deny import permits of fresh potatoes and onions, especially when the domestic production is in season. To mitigate uncertainty associated with this process, the United States requested clarification on the Nicaraguan import requirements for agricultural products and the criteria for the issuance of the import permits during the

CAFTA-DR technical meeting in 2016. The government of Nicaragua has not provided any response to date. The United States will continue to raise this issue in bilateral discussions.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $3.0 billion in 2018, a 39.5 percent decrease ($1.9 billion) over 2017. U.S. goods exports to Nigeria were $2.7 billion, up 23.0 percent ($498 million) from the previous year. Corresponding U.S. imports from Nigeria were $5.6 billion, down 20.3 percent. Nigeria was the United States' 57th largest goods export market in 2018.

U.S. exports of services to Nigeria were an estimated $2.5 billion in 2017 (latest data available) and U.S. imports were $443 million. Sales of services in Nigeria by majority U.S.-owned affiliates were $1.1 billion in 2016 (latest data available), while sales of services in the United States by majority Nigeria-owned firms were $5 million.

U.S. foreign direct investment (FDI) in Nigeria (stock) was $5.8 billion in 2017 (latest data available), a 32.8 percent increase from 2016.

TRADE AGREEMENTS

Nigeria is a member of the Economic Community of West African States (ECOWAS). It participates in the ECOWAS free trade area and its common external tariff, which is slated to be fully harmonized by 2020. Nigeria has signed but not ratified the European Union-West Africa Economic Partnership Agreement (EPA), which is not yet in force.

IMPORT POLICIES

Tariffs

Consistent with the ECOWAS Common External Tariff (CET), Nigeria applies five tariff bands: 1) zero percent duty on essential social goods (*e.g.*, medicine); 2) five percent duty on essential commodities, raw materials, and capital goods; 3) 10 percent duty on intermediate goods; 4) 20 percent duty on consumer goods; and, 5) 35 percent duty on certain goods that the Nigerian government elected to afford greater protection. Under the CET, ECOWAS member governments are permitted to assess duties on imports higher than the maximum allowed in the tariff bands (but not to exceed a total effective duty of 70 percent) for up to 3 percent of the 5,899 tariff lines included in the CET.

Nigeria's MFN applied tariff rate averaged 15.7 percent for agricultural products and 11.5 percent for non-agricultural products in 2016 (latest data available). Nigeria's simple average WTO bound tariff rate is significantly higher at 150 percent for agricultural products and 49.7 percent for non-agricultural products. Nigeria's maximum WTO bound tariff rate for all products is 150 percent.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods that significantly raise the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering tobacco (135 percent for cigars and cigarettes and 85 percent for tobacco and other tobacco products), rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

In October 2013, the Nigerian government announced an Automotive Industry Development Plan (NAIDP), which seeks to expand domestic vehicle manufacturing. The NAIDP imposes a 35 percent levy on automobile imports, which applies in addition to the pre-existing 35 percent tariff, for an effective total *ad valorem* duty of 70 percent. The NAIDP allows companies that manufacture or assemble cars in Nigeria to continue to import two vehicles at the old rate (35 percent tariff only) for every one vehicle produced in Nigeria.

Nontariff Barriers

Nigeria uses nontariff measures in an effort to achieve "self-sufficiency" in certain commodities. For example, in June 2015, the Central Bank of Nigeria (CBN) imposed a series of restrictions that prohibited the use of official foreign exchange to import 41 product categories, including rice, meat, poultry, vegetable oil, and a number of steel products. The CBN indicated that this action was meant to protect and support domestic production, and not solely to maintain the value of its currency or preserve foreign exchange reserves. These measures have made it difficult for U.S. businesses to export the covered items to Nigeria and for Nigerian companies to source inputs needed for production. In 2016, one U.S. company reported difficulty with the Nigerian Customs Service in importing a covered item despite using privately sourced foreign exchange. The U.S. Government has repeatedly raised concerns regarding this measure both bilaterally and in the WTO.

Quantitative Restrictions and Import Bans

In 2014, the Nigerian government introduced a frozen fish import quota regime. The government also banned imports of catfish and tilapia species as part of the quota system. The ban does not appear to cover the Pacific Hake (*Merluccius productus*) species, and the Ministry of Agriculture issued an agreement for a U.S. firm to start exporting Pacific Hake to Nigeria. However, the CBN's foreign exchange restrictions include fish and, therefore, impact U.S. exports of Pacific Hake to Nigeria.

The Nigerian government continues to ban the import of nearly 50 different product categories, citing the need to protect local industries or promote health and safety. The list of prohibited imports currently includes, among other products: cocoa butter, powder, and cakes; pork; beef; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); bagged cement; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellant coils; sanitary plastic wares; paper board; telephone recharge cards and vouchers; textiles, apparel, footwear, and travel goods; used motor vehicles more than ten years old; most types of furniture; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and certain spirits and alcohols.

Customs Barriers and Trade Facilitation

Nigerian customs practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations, lengthy clearance procedures, and corruption. These factors can sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports.

While the government has undertaken efforts to implement access road improvement projects, for now traders continue to report that infrastructural limitations in and around Nigeria's ports contribute to long queues by both trucks and ships, resulting in delays and increased costs. (See the Other Barriers section below for further information.)

Nigeria has ratified the WTO Trade Facilitation Agreement. Nigeria identified Category A commitments as well as indicative dates for implementation of Categories B and C commitments. However, Nigeria has not yet notified its definitive dates for Category B implementation, which were due to the WTO Secretariat by February 22, 2018.

SANITARY AND PHYTOSANITARY BARRIERS

Import bans

Nigeria continues to ban imports of beef, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the reason for the ban is the prevention of bovine spongiform encephalopathy (BSE), but the bans apply to all countries, even those without reported BSE cases. Nigeria also bans the import of live and dead poultry (with the exception of day-old chicks) and poultry meat, including fresh, frozen, and cooked poultry meat, due to alleged concerns about avian influenza. These bans do not appear to have a scientific basis.

Import Certificates

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third party certifiers, and/or exporters' national authorities, depending on the product. These certificates must attest that the product is safe for human consumption (*e.g.*, does not contain aflatoxin). However, Nigeria's limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports in particular, and has contributed to the diversion of imports into informal channels.

GOVERNMENT PROCUREMENT

The Public Procurement Act 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria only requires government entities to engage in competitive bidding for any procurement worth more than ₦2.5 million (around $7,000). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million and up to ₦100 million (around $280,000) for goods and up to ₦1 billion (around $2.8 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Federal government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a "Certificate of 'No Objection' to Contract Award" from the BPP.

In January 2018, President Buhari issued Executive Order 5, which added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to indigenous professionals. Upon the release of the order, U.S.-based firms raised concerns that it specifies that the Ministry of Interior "shall desist from giving visa[s] to foreign workers whose skills are readily available in Nigeria."

There is a local content margin of preference, which varies from project to project, but does not exceed 15 percent. In addition, Nigeria offers a preference to majority Nigerian-owned companies as long as their price is within 15 percent of a majority foreign-owned company. Foreign companies may also be subject to a local content or other localization requirement (*e.g.*, partnership with a local partner firm or joining a consortium). U.S. companies have expressed concerns about corruption and lack of transparency in procurement processes.

The Nigerian government has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. Nigeria's National Assembly operates its own procurement process which has not been subject to BPP oversight and which has lacked transparency. Although U.S. companies have won contracts in a number of sectors, difficulties in receiving payment are not uncommon and can discourage firms from bidding. Supplier or foreign government subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. The Guidelines for Nigerian Content Development in Information and Communications Technology require ministries and development agencies to source and procure all computer hardware only from NITDA-approved OEMs.

Nigeria is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria has taken steps towards improving its legal framework for intellectual property (IP) protection. In 2017, Nigeria submitted its instruments of accession and ratification of four World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Marrakesh Treaty, and the Beijing Treaty. However, pirated and counterfeit goods remain widely available in Nigeria, often threatening the health and safety of consumers. Counterfeit automotive parts, pharmaceuticals, software, music and video recordings, and other consumer goods are widely available. While Nigerian officials were able to seize pirated goods valued at over 3.4 million USD in 2017, enforcement agencies lack sufficient resources and interagency cooperation to enhance enforcement of IP rights.

SERVICES BARRIERS

In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the "Guidelines for Nigerian Content Development in Information and Communications Technology" (the Guidelines). The Guidelines require original equipment manufacturers (OEMs) operating in Nigeria to assemble all hardware products locally and multinational companies operating in Nigeria to source all information and communications technology (ICT) hardware locally. The Guidelines direct all government agencies to source and procure all computer hardware only from NITDA-approved OEMs. In addition, the Guidelines require companies to use only locally manufactured subscriber identification module (SIM) cards and to use indigenous companies to build cell towers and base stations. The United States has encouraged the Government of Nigeria to review its Guidelines, and to avoid such restrictive policies.

The government periodically broadcasts these localization requirements and presses ICT companies to establish local capacity building programs, and those companies have provided explanations as to why it is infeasible to meet some of the guidelines. On June 5, 2017, however, the Office of Nigerian Content Development in Information and Communications Technology distributed a letter threatening OEMs with "criminal offense" if they did not demonstrate compliance with local content guidelines on after-sales support and warranty support. To date, there are no known criminal charges filed against a firm for non-compliance.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens in Nigeria. The Guidelines further require that businesses host all government data locally unless officially exempted. These requirements raise concerns, specifically by foreign businesses that distribute their data storage and processing globally, and also prevent Nigerian businesses from taking advantage of best-in-class cloud computing services.

Local Content Requirements

The Guidelines also require ICT companies to use Nigerian companies for the provision of at least 80 percent of all value-added services on their network. This restriction is even further reaching as a result of its broad, ambiguous definition of a "value-added service," which is vaguely defined in the Guidelines as an "additional or enhanced service that increases the value of an existing product or an offered service." Though enforcement of the Guidelines to date has been almost non-existent, periodic threats of repercussions for non-compliance remain a concern.

INVESTMENT BARRIERS

Nigeria's investment climate continues to be characterized by significant market potential, but also by weak government institutions, corruption, regulatory uncertainty, inadequate infrastructure (especially electricity), security challenges, inadequate health care, poor education systems, and inadequate access to finance for small- and medium-sized enterprises and consumers. These barriers impede potential U.S. investment in Nigeria. Investors also must contend with complex tax procedures, confusing land ownership laws, arbitrary application of regulations, and crime. Companies report that contracts are often violated and that Nigeria's system for settling commercial disputes is weak and often biased. Frequent power outages, as well as poor road, port, rail, and aviation transportation infrastructure pose a major challenge to doing business in Nigeria. These factors hinder Nigeria's ability to compete in regional and international markets. The Nigerian government's efforts to reduce the amount of time, forms, and cost required to establish and operate a business contributed to the country's 24-place rise in the World Bank's Ease of Doing Business Index in 2017, to 145 of 190 countries. However, the lack of further progress on reforms led to a one-place fall in 2018, to 146 of 190 countries.

Foreign exchange restrictions have negatively impacted investment as well as trade. The measures have hampered some U.S. companies' abilities to import finished or semi-finished goods for use in their Nigerian operations. Similarly, the Central Bank of Nigeria has often restricted the repatriation of earnings, causing some businesses to close down or reduce services in Nigeria. These factors have also been a disincentive for new investment, as investors wait for an expected further devaluation of the Nigerian naira.

While 100 percent foreign ownership of firms is generally permitted, investments in the oil and gas sector are limited to joint ventures or production-sharing agreements with domestic firms. Additionally, foreign investors must register with the Nigerian Investment Promotion Commission.

OTHER BARRIERS

Port Congestion, Inefficiency, and Maritime Crime

Delays caused by congestion and the poor condition of port access roads, combined with corruption issues, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, Apapa in Lagos is the most expensive port in the world for shipments from the United States, due to an average delay of 30 days to clear a container ship. Because of a lack of space at Lagos ports, ships often queue for days, and in some cases weeks and months, before being able to berth and discharge their contents. Nigeria estimates that it loses $55.6 million daily because of traffic gridlock at the main port in Lagos. In a December 2015 report on the causes and implications of Nigeria's large informal economy and unrecorded trade, UK-based think tank Chatham House cited port congestion, trucking traffic congestion, and long cargo clearance times of up to several days as incentives for diverting Nigeria-bound trade to other ports in the region with subsequent informal entry into Nigeria. In addition, maritime crime in the Gulf of Guinea, much of it emanating from Nigeria, has a deleterious effect on maritime trade.

Oil and Gas Sector

In 2010, Nigeria enacted the highly trade restrictive Oil and Gas Content Development Act (the Act), which imposed broad-ranging local content requirements on projects in Nigeria's oil and gas sector. Under the Act, all companies operating in this sector must give preferential treatment to Nigerian goods and services, and prioritize Nigerian nationals when hiring. The Act's scope is broad, covering any activity or transaction carried out in, or connected with, the oil and gas industry. The Act's local sourcing mandate, which applies to an extensive list of goods and services supplied to the oil and gas industry, has been a particular concern of U.S. oil and gas service suppliers. Companies must also create and seek approval for a "Nigerian Content Plan" to demonstrate how they will increase local content in their oil and gas operations. Companies that do not follow a Nigerian Content Plan face large fines or cancelation of contracts. Majority foreign-owned companies operating in the sector must also deposit 10 percent of their annual profit in a Nigerian bank.

Restrictions also apply with respect to personnel matters; while Nigeria imposes general quotas on foreign personnel, the quotas are especially strict in the oil and gas sectors. Oil and gas companies must hire Nigerian workers, unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians.

Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS). Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process, and in the process of approving visas for foreign personnel, present serious challenges to the oil and gas industry.

According to stakeholders, the Act is adversely affecting a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies have observed that the Act significantly adds to the cost of doing business in Nigeria.

Corruption

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes has been a great concern to U.S. companies. U.S. firms experience difficulties in day-to-day operations due to inappropriate demands from officials for "facilitative" payments. President Buhari, who was inaugurated in May 2015, made countering Nigeria's endemic corruption a centerpiece of his administration, but is widely seen in the run-up to 2019 elections as having made little progress in this area. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics, including a stalemate in Senate confirmation of the Economic and Financial Crimes Commission's Chair. Questions also remain regarding the Nigerian justice system's willingness and capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

NORWAY

TRADE SUMMARY

The U.S. trade balance with Norway shifted from a goods trade surplus of $402 million in 2017 to a goods trade deficit of $1.3 billion in 2018. U.S. goods exports to Norway were $5.5 billion, up 0.1 percent ($4 million) from the previous year. Corresponding U.S. imports from Norway were $6.7 billion, up 33.5 percent. Norway was the United States' 43rd largest goods export market in 2018.

U.S. exports of services to Norway were an estimated $3.1 billion in 2017 (latest data available) and U.S. imports were $3.0 billion. Sales of services in Norway by majority U.S.-owned affiliates were $5.8 billion in 2016 (latest data available), while sales of services in the United States by majority Norway-owned firms were $1.8 billion.

U.S. foreign direct investment (FDI) in Norway (stock) was $29.2 billion in 2017 (latest data available), a 0.1 percent decrease from 2016.

TRADE AGREEMENTS

Norway, along with, Iceland, Liechtenstein, and Switzerland, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway has implemented, or is in the process of implementing, most EU trade policies and regulations. As an EEA signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway grants preferential tariff rates to EEA members.

IMPORT POLICIES

Except for agricultural products, Norway’s market is generally open.

Tariffs

Norway has continued to dismantle tariffs on industrial products on a unilateral basis. Norway’s Most Favored Nation (MFN) tariff on nonagricultural products averages 0.5 percent, and more than 95 percent of industrial tariff lines are currently duty free.

Norway bound its agricultural tariffs in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of several quotas on agricultural products with high *ad valorem* or specific tariffs. According to the WTO, in 2017 Norway’s most favored nation applied tariff was 42.1 percent for agricultural goods and 0.5 percent for nonagricultural goods.

Although the EEA accord does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement within the EEA framework that results in Norway applying a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and other candies, ice cream, pasta, pizza, soups, and sauces. Such preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Nontariff Barriers

Tariff-Rate Quotas

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments – generally only two to five days before implementation – favor nearby European suppliers and make export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

Agricultural Support

Although agriculture accounts for only 0.5 percent of gross domestic product, support provided by Norway to its agricultural producers was 57 percent of total farm receipts between 2015 and 2017, among the highest in the world according to the OECD and more than 3 times the OECD average. Norway justifies this high level of domestic support based on "nontrade concerns," including food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas.

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

Government monopolies

Although U.S. market shares have increased in recent years, it continues to be difficult for U.S. wine exporters to sell in the Norwegian market. The wine and spirits retail market in Norway is controlled by the government monopoly, "Vinmonopolet." Obtaining approval to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, and Vinmonopolet's six-month marketing and product plans for selecting and purchasing wines significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas; otherwise, they are dropped from the basic inventory list. Existing wine suppliers benefit from exposure in Vinmonopolet stores, and the market entry challenges for U.S. wines are exacerbated by the strict ban on advertising alcoholic beverages.

TECHNICAL BARIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In January 2018, the Public Health Minister called for Norway to regulate energy drinks, and in September, the Norwegian Food Safety Agency directed the country's Science Committee for Food and Environment to conduct a risk assessment of possible negative health effects of energy drinks, especially as related to children and adolescents. As part of the public comment process, the European trade association Energy Drinks Europe recommended a limitation on can-size but not a limitation on the amount of caffeine per serving; this would adversely affect a U.S. company, while having no impact on its main European competitor. Norway has not yet enacted legislation on energy drinks.

Sanitary and Phytosanitary Barriers

Transparency

As a member of the EEA, Norway applies certain EU sanitary and phytosanitary (SPS) regulations, with the exception of regulations relating to plant health. However, EEA countries, including Norway, may adapt certain EU regulations based on national context. In 2018, Norway notified only two SPS measures to the WTO (both were plant health-related measures), despite the obligation to notify proposed SPS measures to the WTO and take comments into consideration prior to finalizing its SPS measures.

Agricultural Biotechnology

With limited exceptions, Norway has effectively banned the importation of agricultural biotechnology products by implementing extremely restrictive policies for crops derived from such technology. The restrictions include prohibiting farmers from cultivating biotech crops and using biotech feed for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products and accordingly to open its market to U.S. exports of such products.

Beef and Beef Products

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that this practice poses any risk to human health.

GOVERNMENT PROCUREMENT

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders, a lack of adequate time to bid, and a lack of protection for confidential information that may prejudice fair competition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although recent legislative developments, enforcement actions, and the increased availability of authorized copyright-protected works online have had a positive effect on reducing Internet piracy, some private sector stakeholders suggest that Norway needs to continue its efforts to combat online piracy, such as by clarifying the circumstances under which Internet Service Providers are required to provide information about the identity of subscribers that can be linked to infringements. Rights holders also are concerned that a general extended collective license for audiovisual works may be implemented in a manner that will not allow rights holders to opt out, undermining their ability to exercise their exclusive rights individually.

INVESTMENT BARRIERS

Foreign companies wishing to own or use various kinds of real property must seek prior approval from the government. In the petroleum sector, Norway's discretionary concession process appears to have historically favored Norwegian interests. Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investment up to 20 percent equity.

OMAN

TRADE SUMMARY

The U.S. goods trade surplus with Oman was $1.1 billion in 2018, a 24.3 percent increase ($223 million) over 2017. U.S. goods exports to Oman were $2.4 billion, up 22.0 percent ($436 million) from the previous year. Corresponding U.S. imports from Oman were $1.3 billion, up 20.0 percent. Oman was the United States' 60th largest goods export market in 2018.

U.S. exports of services to Oman were an estimated $528 million in 2017 (latest data available) and U.S. imports were $258 million. Sales of services in Oman by majority U.S.-owned affiliates were $468 million in 2016 (latest data available). There were no sales of services in the United States by majority Oman-owned firms.

U.S. foreign direct investment (FDI) in Oman (stock) was $1.8 billion in 2017 (latest data available), a 16.2 percent increase from 2016.

FREE TRADE AGREEMENTS

The United States-Oman Free Trade Agreement

Under the United States-Oman Free Trade Agreement (FTA), Oman provides duty-free access on all industrial and consumer products, and comprehensive obligations for services and investment.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent) and tobacco products. However, as of 2018 not all GCC Member States have implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax.

Taxes

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State as well. Oman is not expected to apply the VAT until sometime in 2019.

Nontariff Barriers

Import Licensing

Companies that import goods into Oman must register with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as poultry, livestock, alcohol, firearms, narcotics, and explosives, requires a special license. Media imports are subject to review for potentially offensive content and may be subject to censorship. Importation of some goods for personal consumption do not require an import license.

Customs Barriers and Trade Facilitation

Companies importing U.S. goods occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the United Arab Emirates; inconsistent application of requirements by the Royal Oman Police Customs Directorate (ROP customs authority) for origin marking, segregation, and other documentation; and the lack of any published official guidance in these areas.

Oman ratified the WTO Trade Facilitation Agreement (TFA) in February 2017 and has availed itself of the flexibilities for developing countries in Section II of the Agreement. Oman submitted its Category A commitments, but has yet to designate the remaining provisions of Section I. Category B notifications with definitive timelines were due in February 2018. Further, Oman designed all four of the transparency provisions in Section I as Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the agreement, February 22, 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC “G” mark in an effort to “unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers.” U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

In 2017, agricultural stakeholders raised concerns regarding import requirements in Oman involving certification for pesticide residues as well as radiation attestations for agricultural products. These regulations are far more restrictive than U.S. food safety controls for protecting human and animal health. According to Omani Ministry of Agriculture officials, radiation testing is done randomly and other testing conforms with U.S. standards.

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex Alimentarius Commission, the International Plant Protection Convention, or the World Organization for Animal Health. As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

The FTA requires covered government agencies and entities in Oman to conduct procurements covered by the agreement in a fair, transparent and nondiscriminatory manner. Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board's website. Some U.S. companies report that award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines.

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Government Procurement Agreement in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Oman committed in the FTA to provide strong intellectual property rights (IPR) protection and enforcement. Oman revised its IPR laws and regulations to implement its FTA commitments, adopted the GCC Trademark Law, and acceded to several international IPR treaties.

While IPR laws in Oman are strong, the Omani system places a burden on right holders to perform their own monitoring and enforcement through legal actions in the courts. U.S. stakeholders have experienced difficulty getting the responsible government agencies to take enforcement action. While law firms in Oman recently reported improvement in the response rate of agencies to IP complaints, the continued confusion about which agency is responsible for investigating different types of IP violations adds to the lack of efficiency in IPR enforcement.

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Professional Services

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. U.S. ownership in a legal services firm is limited to no more than 70 percent.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

The government of Oman, operating through its government majority-owned telecommunications service providers and through its telecommunications regulator, periodically slows down or blocks access to certain over-the-top (OTT) services such as Voice over Internet Protocol (VoIP) services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

U.S. companies remain concerned about rules governing the acquisition of property. Although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes. With the exception of certain tourism-related property agreements, only companies or enterprises with at least 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing a warehouse or show room, administrative office, staff accommodation or other building with a similar purpose. Other enterprises, including foreign majority-owned businesses, must seek “usufruct” rights that enable them to exploit, develop, and use land granted by Omani or GCC companies or nationals.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $783 million in 2018, a 2.2 percent increase ($17 million) over 2017. U.S. goods exports to Pakistan were $2.9 billion, up 4.3 percent ($121 million) from the previous year. Corresponding U.S. imports from Pakistan were $3.7 billion, up 3.9 percent. Pakistan was the United States' 55th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Pakistan (stock) was $518 million in 2017 (latest data available), a 25.7 percent increase from 2016.

TRADE AGREEMENTS

Pakistan and the United States signed a Trade and Investment Framework Agreement (TIFA) in 2003, and Pakistan has free trade agreements (FTA) with China, Indonesia, Iran, Malaysia, Mauritius, and Sri Lanka. Pakistan is also a signatory of the South Asian Free Trade Agreement and the Afghanistan-Pakistan Transit Trade Agreement. Pakistan is negotiating FTAs with Turkey and Thailand and re-negotiating its existing FTA with China.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Pakistan’s applied Most Favored Nation (MFN) tariff rate averages 12.1 percent, while its average WTO bound rate averages 61 percent in 2016 (latest data available). For agricultural products, the average applied MFN tariff rate is 13.4 percent, with an average WTO bound rate of 96.2 percent. Tariffs are lower for non-agricultural products, with an average applied MFN tariff rate of 11.9 percent and average WTO bound rate of 55.1 percent.

Pakistan groups tariff rates into categories by levels of domestic market protection. Between 2013 and 2017, Pakistan gradually reduced the number of tariff categories from seven to four, and reduced the maximum tariff category rate from 30 percent to 20 percent. The current general tariff categories are 3 percent, 11 percent, 16 percent, and 20 percent. However, individual tariff rates within each category may vary. The weighted average basis of all applied tariffs within a category is equal to the category rate, and some individual tariff rates may still be significantly higher than the category rate listed. Individual tariff rates range from zero percent to 35 percent.

Despite the reduction in tariff categories and tariff rates in the last five years, Pakistan continues to protect several key local industries, such as automobiles, by imposing high tariff rates. Pakistan imposes higher tariff rates (35 percent) on imports of automobile parts that compete with domestically manufactured products than on imports of automobile parts with no domestic competition (20 percent). In March 2016, the Ministry of Industries and Production adopted Pakistan’s Automotive Development Policy 2016-2021, which offers tax incentives to new entrants and is aimed at attracting U.S. and European automakers to establish automotive manufacturing units in Pakistan. These incentives include: 1) one-off, duty-free importation of plant and machinery to establish an assembly and manufacturing facility; 2) permission to import, at 50 percent of the prevailing duty, 100 vehicles of the same variants in the form of completely built units, for test marketing after establishing the production facility; 3) for new investors, a 10 percent reduction in customs duty (from the prevailing 32.5 percent) for non-local production parts for five years; and 4) for five years, importation of local production parts by new investors at 25 percent duty (versus the 50 percent duty for current assemblers and manufacturers). Some foreign investors have reportedly started to take advantage of these automotive manufacturing incentives.

Pakistan also grants sector- and product-specific duty exemptions, concessions, and other protections through the promulgation of statutory regulatory orders (SROs). A list of SROs, and other trade policy and regulatory documents, can be found on the Federal Board of Revenue's (FBR) website.

Pakistan previously pledged to eliminate the use of SROs through an International Monetary Fund (IMF) program completed in September 2016. However, many SROs remain, and Pakistan has not provided a concrete timeline for their removal. Pakistan did eliminate the FBR's authority to issue new SROs and transferred the authority to the Economic Coordination Committee, a cabinet-level body in the Prime Minister's office.

SRO 1265, issued in October 2018, imposed a "regulatory duty" on the import of 570 items and was intended to slow import growth. Although this SRO focused on "luxury goods" and consumables, and the overall impact on U.S. exporters was apparently limited, a number of U.S. companies have raised concerns with the U.S. Government about duty increases on inputs that would raise production costs and the price of finished goods manufactured in Pakistan.

Pakistan also protects two key agricultural commodities – wheat and sugar – through the imposition of regulatory duties announced in SROs.

Taxes

Pakistan reduced the corporate tax rate from 35 percent to 30 percent in 2013. In April 2018, the Ministry of Finance announced a plan to reduce the rate of corporate tax to 25 percent by 2023. The current government has maintained that stance, reducing the corporate tax rate by one percent in the September mini-budget.

Pakistan was under significant pressure from the IMF to increase tax revenue when using an IMF Extended Fund Facility in 2015. Rather than significantly broaden the country's tax base, the government leaned on large companies, especially international firms, to increase revenues. U.S. companies have since experienced increased pressure from the FBR to prepay anticipated tax liabilities, and it is reportedly very difficult to obtain refunds of prepayments made in excess of liability. Although small and medium-sized U.S. companies have not seen their tax burden increase as substantially as much as larger multinational corporations, they have expressed concern that many of their local competitors do not pay taxes at all. The U.S. Government has engaged Pakistan at the highest levels on issues of unfair or subjective taxation and continues to reinforce the importance of Pakistan broadening its tax base.

In 2015, Pakistan imposed a "super tax" for rehabilitation of internally displaced persons, on top of other taxes. The super tax was initially 4 percent for banking companies and 3 percent for non-banking companies with income exceeding PKR 500 million ($4 million). The United States and U.S. industry expressed concerns about the super tax. In April 2018, the Ministry of Finance announced the government would reduce the super tax by 1 percent every year until eliminating it for non-bank companies in 2020 and for banks in 2021. The current government carried out the first step in this process by reducing the tax by one percent for both banks and non-banks in the September mini-budget.

U.S. importers have also raised concerns about SRO 420 issued in 2014 that raised the sales tax on imported "finished footwear and apparel" from 5 percent to 17 percent, while domestically produced products continue to be taxed at 5 percent. FBR officials have been claiming since 2015 that the tax on domestically produced products will also be increased to 17 percent, but no change has been made in this regard.

Nontariff Barriers

Import Restrictions

Pakistan permits the import of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Imports of waste, parings, and scrap of polyethylene and polypropylene must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Pakistan restricts the import of second-hand vehicles, watercraft, trawlers, aircraft, and related parts and equipment unless they meet specified conditions, such as prior approval or clearance, certain testing arrangements, or other procedural requirements. While Pakistan maintains that these requirements are for health, safety, security, and environmental reasons, the requirements appear to limit the supply of products into the country.

Import Licensing

Pakistan does not require import licenses, except for sensitive goods. The Commerce Ministry makes available the list of goods for which licenses are required.

Customs Barriers and Trade Facilitation

Customs Valuation

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan. This reported inconsistency has affected both U.S. and other foreign companies. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Other Customs Barriers

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Rule 391 places the responsibility of including such documents and imposes liability for failure to comply on the owner of the goods and the carrier.

Such rules could present compliance challenges for companies whose global supply chains require the use of intermediaries, re-invoicing, or the storage of goods at various points during transit from production to the end user. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. FBR officials have stated that customs officials have the discretion to impose penalties, while recognizing the variety in invoicing systems from different companies. While the Pakistani government has shown a willingness to provide a solution for U.S. companies, and the U.S. government has worked with the FBR to that end, these rules remain formally in place and Pakistan customs could exercise its discretion under this authority at any time.

To import goods in general, traders must have a National Tax Number (NTN) certificate (issued by the FBR on filing of an application and one attested copy of the importer's National Identity Card); a Pakistani bank account; sales tax registration; and a membership certificate in the Chamber of Commerce and Industries or any relevant trade association of Pakistan.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pakistan's packaging requirements normally follow Codex Alimentarius Commission (Codex) rules. Pakistan generally accepts packaging material if allowed in the exporting country. A notable exception, however, is vegetable oil. Pakistan requires refined vegetable oil be imported in bulk for re-packaging, a requirement aimed at encouraging local packaging and saving foreign exchange.

Sanitary and Phytosanitary Barriers

Pakistan has not fully recognized the United States' negligible risk status for bovine spongiform encephalopathy (BSE). In February 2015, Pakistan established import requirements for the import of live cattle from the United States, which in 2013 received a negligible risk status for BSE in accordance with World Animal Health Organization guidelines. On March 2, 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, representing the first shipment since 1999. Since then, Pakistan imported additional shipments of U.S. live cattle. However, Pakistan continues to ban some U.S. beef and beef products, ostensibly over BSE concerns. The United States continues to work with the Ministry of Commerce and the Ministry of National Food Security and Research to fully open the market for U.S. beef.

The government of Punjab has established trait-based semen import requirements that would limit market access to imported semen for dairy and beef producers. The federal and provincial governments are reviewing the matter; no timeframe has been set for its resolution.

SUBSIDIES

In April 2016, the government of Pakistan announced a PKR 20 billion ($165 million) package under the Strategic Trade Policy Framework (STPF) 2015-18 and added an additional PKR 6 billion ($48 million) subsidy under the textile policy, with zero sales taxes for export oriented sectors, better financing facilities, and a cheaper uninterrupted power supply. On January 10, 2017, the government of Pakistan announced another Trade Enhancement Initiative, a PKR 180 billion ($1.7 billion) incentive package designed to reverse Pakistan's declining exports.

In March 2018, the government of Pakistan authorized an export subsidy of up to $159 per metric ton to facilitate exports of up to 2.0 million metric tons of wheat. The subsidy, in effect through June 30, 2018, was intended to reduce stocks prior to the conclusion of the 2018 harvest.

GOVERNMENT PROCUREMENT

Pakistan is an observer to the WTO Committee on Government Procurement but is not a signatory to the WTO Agreement on Government Procurement. The Public Procurement Regulatory Authority is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures. International tender notices must be publicly advertised and sole source contracting tailored to company-specific qualifications is prohibited. There are no formal "buy national" policies in Pakistan. However, political influence on procurement awards, allegations of public corruption, lack of transparency, judicial intervention, and long delays in bureaucratic decision-making are commonly cited as impediments to government procurement. (*See the Other Barriers Section below for further information.*)

Since 2014, Pakistan has begun to rely more on technical qualifications in its procurements, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency uses the U.S. bid as a basis for further negotiations with other competitors, rather than accepting the lowest priced and technically superior bid as outlined in bidding guidelines. For example, this has occurred with competing Chinese firms. Other companies believe the government of Pakistan uses lower bids as an effort to negotiate lower prices to procure higher quality U.S. and European Union goods.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan remained on the Special 301 Watch List in 2018. In recent years, Pakistan has undertaken efforts to implement key provisions of the Intellectual Property Organization of Pakistan (IPO-Pakistan) Act of 2012 and has devoted increased attention and resources to intellectual property rights (IPR) issues, including with respect to U.S.-Pakistan bilateral engagement, especially under the TIFA; the establishment of IP Tribunals; taking steps to implement rules and establish a seed protection registry; public awareness campaigns on IPR protection; and, ongoing engagement with stakeholders.

Despite these improvements, as the 2018 Special 301 Report noted, Pakistan must do significantly more to improve IPR protection. Counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals, printed materials, optical media, digital content, and software. Furthermore, the United States also maintains longstanding concerns related to patents, copyrights, trademarks, customs enforcement, and protection against the unfair commercial use and disclosure of test and other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

Pakistan has one of the lowest tax-to-gross domestic product (GDP) ratios in the world – approximately 12.7 percent in 2018. Pakistan relies heavily on multinational corporations for a significant portion of tax collections. Foreign investors in Pakistan regularly report that both federal and provincial tax regulations are difficult to navigate. The World Bank’s Doing Business 2019 report notes that companies pay 47 different taxes, compared to an average of 27.6 in other South Asian countries. In addition, companies frequently lament the lack of transparency in the assessment of taxes.

Pakistan generally permits foreign investment in services without equity caps, except in certain sectors such as agriculture, aviation, banking, defense, media, insurance, and railways. In an effort to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors’ remittance of royalty payments to a maximum of $100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the next five years.

Foreign banks that do not have global Tier-1 paid-up capital (*i.e.*, equity and retained earnings of $5 billion or more), or are not from countries that are part of regional groups and associations of which Pakistan is a member (*e.g.*, the Economic Cooperation Organization and the South Asian Association for Regional Cooperation), must incorporate as a local company in order to conduct banking business in Pakistan. FDI is limited to 49 percent in each bank. Foreign and local banks must submit an annual branch expansion plan to the SBP for approval based on financial factors and the needs of the local population. All banks are required to open 20 percent of their new branches in small cities, towns, and villages.

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. The government has discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet up to 65 percent of their re-insurance needs; the remainder of reinsurance must be ceded locally.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Pakistan periodically blocks access to Internet-based services for hosting content deemed to be blasphemous or immoral. Pakistan suspended access to an entire online service for the whole country 11 times in 2018 in response to a single piece of content deemed offensive. Pakistan also periodically blocks online services or suspends mobile broadband services on the grounds that such services can be used to undermine national security. Such blockages undermine the value of these services to their customers and impose costs on local firms that depend on these services for their own business.

INVESTMENT BARRIERS

The 2013 Investment Policy eliminated minimum initial capital investment requirements across sectors so that no minimum investment requirement or upper limit on the share of foreign equity is allowed, with the exception of the airline, banking, agriculture, and media sectors. Foreign investors in the services sector may retain 100 percent equity, subject to obtaining permission (*i.e.*, a "no objection" certificate or license) from the concerned agency and fulfilling the requirements of any applicable sectoral policy. In the education, health, and infrastructure sectors, 100 percent foreign ownership is allowed, while in the agricultural sector, the threshold is 60 percent, with an exception for corporate agriculture farming, where 100 percent ownership is allowed. There are no restrictions on payments of royalties and technical fees for the manufacturing sector, but there are restrictions on other sectors, including a $100,000 limit on initial franchise investments and a cap on subsequent royalty payments of 5 percent of net sales for five years. Royalties and technical payments are subject to a 15 percent income tax, and subject to remittance restrictions listed in Chapter 14, section 12 of the SBP Foreign Exchange Manual. The tourism, housing, construction, and information and communications technology sectors have been granted "industry status," making them eligible for lower tax and utility rates compared to "commercial sector" enterprises, including banks and insurance companies. Small-scale mining valued at less than PKR 300 million (roughly $2.6 million) is restricted to Pakistani investors.

Foreign investors are allowed in all sectors except arms, ammunition, high explosives, radioactive substances, securities, currency, and consumable alcohol. There are no restrictions or mechanisms that exclude U.S. investors specifically.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, there have been reports of U.S. and other companies facing bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government's focus on maintaining foreign currency reserves. One U.S. company has been seeking to repatriate assets from the sale of a local subsidiary for four years; despite repeated assurances from Ministry of Finance and other senior officials, the funds have not yet been allowed to be remitted by the Pakistani bank at which they are held.

The 18th Amendment to Pakistan's constitution, passed in 2010, gives the country's provinces the authority to levy taxes and regulate some sectors of the economy. While intended to provide provinces with greater autonomy, the move has also complicated Pakistan's investment climate, as the delineation of federal and provincial responsibilities is often unclear.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. The World Bank listed Pakistan 156 of 190 countries in enforcing contracts in its 2019 Ease of Doing Business report. Parties pursuing legal remedies in the Pakistani civil judicial system may face significant delays and unpredictable outcomes in the country's overloaded courts. Lack of enforcement of court rulings is also a significant problem.

OTHER BARRIERS

Bribery and Corruption

Corruption and a weak judicial system have been cited as substantial disincentives to foreign investment in Pakistan. Transparency International ranked Pakistan 117 out of 180 countries in its Corruption Perceptions Index 2017, and Freedom House said "corruption is believed to remain endemic in practice" in its Freedom in the World 2018 report. The country's federal anticorruption agency, the National Accountability Bureau, functions as established under President Musharraf, but in 2009 Pakistan's Supreme Court directed the National Assembly to pass new legislation to establish it formally. In 2010, the 18th amendment declared all acts and laws made by Musharraf without lawful authority, but the National Assembly has yet to pass legislation to legitimize the organization.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $6.4 billion in 2018, a 9.6 percent increase ($564 million) over 2017. U.S. goods exports to Panama were $6.9 billion, up 9.3 percent ($584 million) from the previous year. Corresponding U.S. imports from Panama were $462 million, up 4.4 percent. Panama was the United States' 35th largest goods export market in 2018.

U.S. exports of services to Panama were an estimated $1.6 billion in 2017 (latest data available) and U.S. imports were $1.3 billion. Sales of services in Panama by majority U.S.-owned affiliates were $1.2 billion in 2016 (latest data available).

U.S. foreign direct investment (FDI) in Panama (stock) was $4.7 billion in 2017 (latest data available), a 9.4 percent increase from 2016. U.S. direct investment in Panama is led by nonbank holding companies, wholesale trade, and finance/insurance.

TRADE AGREEMENTS

United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. The TPA includes important disciplines relating to market access, customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

The first tariff reduction under the TPA took place upon entry into force on October 31, 2012, and subsequent tariff reductions occur on January 1 of each year. The eighth round of tariff reductions took place on January 1, 2019. The TPA tariff rates are applied to U.S. products that meet the TPA's rules of origin. Over 87 percent of U.S. exports of consumer and industrial products to Panama became duty free immediately upon entry into force of the TPA. The remaining tariffs on consumer and industrial products are being phased out over the course of 10 years following the entry into force of the TPA. The TPA provides for immediate duty-free treatment upon entry into force for over half of U.S. agricultural exports to Panama (by value). The TPA also provides for duties on most other agricultural goods to be phased out over a 5- to 12-year period following the entry into force of the TPA, with duties on the most sensitive products phased out over 15 years to 20 years. The TPA created expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas, which provided immediate duty-free access for specific quantities of certain agricultural products. This access has grown as quotas have increased and over-quota duties have phased out over the course of the applicable implementation period.

Article 3.17 of the TPA allows a Party to apply an agricultural safeguard measure for goods identified in Annex 3.17 under certain circumstances, and only until the end of the calendar year in which the Party applies the measure. On July 20, 2018, Panama's Ministry of Commerce and Industry's National Director of International Trade Treaties published a resolution imposing an agricultural special safeguard for U.S.

pork and pork products included in Annex 3.17. The resolution re-established the base tariff rate of 70 percent for pork meat and pork products. The safeguard measure expired on December 31, 2018 as per the TPA provisions.

Taxes

All goods and most services sold in Panama, except for foods and feeds, are subject to a seven percent value-added tax (ITBMS). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges, which inflates the tax compared to domestic products. The ITBMS is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using appropriate documents, are exempt from the ITBMS.

Nontariff Barriers

Import Bans

In October 2018, the National Assembly of Deputies approved Draft Bill No. 680. This bill purported to protect local agricultural production and stabilize this sector by prohibiting any imports of milk, cheese, and meats for 12 months. The President vetoed this bill on November 20, 2018, noting concerns about Panama's international commitments.

Import Licensing

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, "Panama Emprende." Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

Other Market Access Barriers

In October 2017, the National Assembly's Commission for Agricultural Affairs initiated a debate (vote) on draft Bill 577, which would assign additional functions to the Panamanian Food Safety Authority (AUPSA). Bill 577 includes changes to AUPSA's decision-making structure to allow for industry input on import rules and regulations, appearing to move AUPSA away from science-based decision-making. These provisions were included in the bill based on interest from domestic producers. Panamanian President Varela had vetoed two similar draft bills in May 2015 and in April 2017, due to concerns about whether they would restrict trade and market access. President Varela likewise vetoed draft Bill 577, but the National Assembly overrode the veto. As of December 2018, the law was before Panama's Supreme Court for a final decision, due to the President's objections based on his concerns about Panama's international commitments.

Customs Barriers and Trade Facilitation

Panama ratified the WTO Trade Facilitation Agreement (TFA) in November 2015. Panama has availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Panama has submitted its Category A notification to the WTO Secretariat, but has not notified the remaining commitments. Panama should have notified its definitive dates for Category B commitments by February 2018. Additionally, Panama notified two of the four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

SANITARY AND PHYTOSANITARY BARRIERS

The AUPSA was established by Decree Law 11 in 2006 to issue science-based sanitary and phytosanitary (SPS) import policies for agricultural and food products entering Panama. The AUPSA does not have regulatory authority over domestically-produced products. In the last four years, AUPSA, as well as other parts of the Panamanian government, has implemented or proposed measures that appear to be aimed at restricting market access, as well as increasing AUPSA's ability to limit the import of certain agricultural goods (*see the Nontariff Barrier section above for further information*).

GOVERNMENT PROCUREMENT

Panama is not a signatory to the WTO Agreement on Government Procurement (GPA), but the United States-Panama TPA contains disciplines on government procurement.

Procurement historically has presented barriers to trade in Panama. The Varela administration has publicly committed to ensuring greater transparency in the award of government tenders. (*See the Bribery and Corruption section below for further information*.)

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The protection and enforcement of intellectual property rights (IPR) in Panama is the responsibility of the Inter-institutional Committee for Intellectual Property (CIPI), comprised of representatives from five government agencies: the Colon Free Zone, the Intellectual Property Registry, the Ministry of Education, the National Customs Authority, and the Attorney General's Office. The CIPI is led by the Ministry of Commerce and Industry. The CIPI coordinates enforcement actions and holds seminars to improve public awareness and compliance with laws protecting and enforcing IPR.

In 2012, Panama updated its legislative framework in order to implement the requirements of the TPA, which called for improved standards for the protection and enforcement of a broad range of IP protections. These included enhanced protections for patents, trademarks, undisclosed test or other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, digital copyrighted products such as software, music, text, and videos, and other measures to deter piracy and counterfeiting. Panama still must develop a system for Internet service provider notice-and-takedown procedures and pre-established damages for copyright infringement and trademark counterfeiting. While challenges remain, for example in the areas of trademarks as well as pirated and counterfeit goods, the United States continues to engage closely with Panama to ensure the effective implementation of all TPA obligations.

SERVICES BARRIERS

In addition, Resolution 055-2016, issued by AUPSA and the National Norms Administration (Dirección Nacional de Normas, DINAN), states that imports into Panama using postal or courier delivery services (private or public) of foods and cosmetics for personal use shall not exceed three transactions in a one year period per individual purchaser. The United States is monitoring these activities and urging Panama to avoid unnecessary restrictions on trade.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, U.S. investors and individual property holders have raised concerns about property disputes and land titles. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Although Panama enacted a law in 2009 (Law 80) that attempted to address the lack of titled land in certain parts of the country, some of the decisions taken by the National Land Authority have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes.

OTHER BARRIERS

Bribery and Corruption

President Juan Carlos Varela, who will end his five-year term in July 2019, pledged to root out corruption by increasing transparency in government procurement and ensuring that government tenders are awarded transparently and fairly. The Varela Administration also pursued legal cases against former government officials for embezzlement and misappropriation. Following the release of the "Panama Papers" in April 2016, President Varela created an independent commission of experts to review Panama's legal and financial practices. Nevertheless, several high-profile corruption scandals have created considerable pressure on the government to do more. In late 2016, Odebrecht, a Brazilian firm, admitted to paying $59 million in bribes to win Panamanian contracts of at least $175 million between 2010 and 2014, during the Martinelli administration. Separately, former President Martinelli was extradited to Panama in 2018 to face charges related to illegal wiretapping of political opponents, and is awaiting trial.

Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention Against Corruption in 1998, but there is a perception that Panama could do more to implement the conventions. Concerns remain regarding the competence and independence of the judicial system, based on certain court decisions. The United States continues to stress the need to increase transparency and accountability in both government procurement and judicial processes.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was $2.2 billion in 2018, a 13.3 percent decrease ($346 million) over 2017. U.S. goods exports to Paraguay were $2.4 billion, down 12.5 percent ($340 million) from the previous year. Corresponding U.S. imports from Paraguay were $131 million, up 4.8 percent. Paraguay was the United States' 61st largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Paraguay (stock) was $179 million in 2017 (latest data available), a 13.5 percent decrease from 2016.

IMPORT POLICIES

Tariffs

Paraguay’s Most Favored Nation (MFN) applied tariff rates range from zero percent to 29 percent, with a simple average MFN applied tariff rate of 9.8 percent in 2017 (latest data available). Paraguay’s simple average World Trade Organization (WTO) bound tariff rate is significantly higher at 33.5 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. Venezuela has been suspended from MERCOSUR since December 2016. MERCOSUR’s Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent.

Under a July 16, 2015 MERCOSUR Common Market Council (CMC) decision, each MERCOSUR member is permitted to maintain a limited number of exceptions to the CET for an established period. Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2019. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the official website.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country’s customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled. The MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and a December 2010 plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but thus far, only Argentina has done so. In Paraguay, the CCC is still pending approval by the Congress.

Nontariff Barriers

Import Bans/Restrictions

Paraguayan law prohibits the importation of automobiles older than 10 years and of used clothing. However, with respect to automobiles, in February 2013 the Supreme Court declared the law banning used automobiles to be unconstitutional and therefore unenforceable. Thus, automobiles older than 10 years are being imported into Paraguay.

Seasonal restrictions on some agricultural products (*e.g.*, tomatoes, bell peppers, and onions) are sometimes implemented to protect local producers.

Import Licensing

Paraguay requires import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, shoes, insecticides, agrochemicals, soy grains, barbed wire, wire rods, and steel and iron bars. Licensing is non-automatic and requires review by the Ministry of Industry and Commerce. Imports of personal hygiene products, cosmetics, and perfumes and toiletries also require a health certification and therefore must undergo a review by the Ministry of Health. The import license process usually takes 10 days, but for goods that require a health certification, it can take up to 30 days. Once issued, the health certification is valid for only 30 days, and imports must therefore be made within this 30-day window. This can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to these delays, importers may need to reapply for an import license or health certification.

Customs Barriers and Trade Facilitation

Paraguay requires that specific documentation for each import shipment (*e.g.*, commercial receipt, certificate of origin, and cargo manifest) be certified by either the Paraguayan consulate in the country of origin or, subject to payment of a fee, by the Ministry of Foreign Affairs in Paraguay. These consularization requirements are burdensome and costly for U.S. exporters.

Paraguay also requires all companies operating within its borders to contract the services of a customs broker. Customs broker fees are standardized by Paraguayan law.

Paraguay has ratified the WTO Trade Facilitation Agreement (TFA) and availed itself of the flexibilities for developing countries in that agreement. Paraguay notified three transparency provisions under Category A, for implementation by entry into force of the TFA, but has yet to provide to the WTO Secretariat the information required by these provisions.

Paraguay has not submitted Checklist of Issues replies to the WTO Committee on Customs Valuation. The United States will continue to emphasize the importance of submitting the notification, which is an integral to a well-functioning review process in that committee.

GOVERNMENT PROCUREMENT

Paraguay's Public Contracting Law stipulates that all public contracting at the national and local levels with a value in excess of approximately $6,000 must be done via the National Directorate for Public Contracts. Foreign firms can bid directly on tenders deemed "international", but bids on "national" tenders can only occur through the foreign firms' local legal agents or representatives. Paraguayan law gives preference to locally produced goods in public procurements open to foreign suppliers, even if the domestic good is up to 20 percent more expensive than the imported good. Paraguay's public procurements historically have been associated with corruption allegations, although the government is making efforts to enhance transparency and accountability through the government's online procurement system and more user-friendly modules.

Paraguay is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Paraguay was removed from the Special 301 Watch List in 2015 pursuant to an Out-of-Cycle Review. The United States and Paraguay signed a Memorandum of Understanding (MOU) on Intellectual Property Rights (IPR) in June 2015, under which Paraguay committed to take specific steps to improve its IPR protection and enforcement environment. Additionally, the MOU facilitates bilateral cooperation in which the United States supports, as appropriate, Paraguay's efforts to strengthen the legal protection and enforcement of IPR. The National Directorate of Intellectual Property continues to improve administrative activities and some enforcement efforts, but other issues continue to plague the market for U.S. firms that rely on IPR protection. For example, U.S. firms remain concerned about the lack of coordinated enforcement against piracy and counterfeiting under the criminal code, particularly in Ciudad del Este. Other concerns include: (1) judicial inefficiency and delays in IPR cases; (2) lack of protection against unfair commercial use and unauthorized disclosure of, and reliance on, undisclosed test or other data submitted to the government by agrochemical or pharmaceutical companies for marketing approval; (3) the reported use of unlicensed software by offices within the Paraguayan government; and (4) the theft of pay television signals and related trafficking of satellite decoder devices.

INVESTMENT BARRIERS

Under Paraguayan law, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that such "just cause" exists. This requirement often leads to expensive out-of-court settlements. The law has impeded foreign investment because of concerns that Paraguayan companies may unreasonably threaten expensive litigation.

Judicial uncertainty and corruption mar Paraguay's investment climate. Many investors find it difficult to adequately enforce contracts and are frustrated by lengthy bureaucratic procedures. The government of Paraguay has taken steps to increase transparency and accountability, including the passage of its Access to Information Law, but corruption and impunity continue to hamper the investment climate.

PERU

TRADE SUMMARY

The U.S. goods trade surplus with Peru was $1.8 billion in 2018, a 26.9 percent increase ($371 million) over 2017. U.S. goods exports to Peru were $9.6 billion, up 11.2 percent ($971 million) from the previous year. Corresponding U.S. imports from Peru were $7.9 billion, up 8.2 percent. Peru was the United States' 31st largest goods export market in 2018.

U.S. exports of services to Peru were an estimated $2.7 billion in 2017 (latest data available) and U.S. imports were $1.5 billion. Sales of services in Peru by majority U.S.-owned affiliates were $1.9 billion in 2016 (latest data available), while sales of services in the United States by majority Peru-owned firms were $5 million.

U.S. foreign direct investment (FDI) in Peru (stock) was $6.4 billion in 2017 (latest data available), a 10.9 percent increase from 2016. U.S. direct investment in Peru is led by mining, manufacturing, and nonbank holding companies.

TRADE AGREEMENTS

United States-Peru Trade Promotion Agreement

The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement that resulted in the significant liberalization of trade in goods and services between the United States and Peru. Customs duties for PTPA qualifying U.S. goods have been eliminated on substantially all Peruvian tariff lines. Peru will remove all remaining tariffs, which apply only to select agricultural products, by 2026.

The PTPA also includes important disciplines with respect to customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and transparency. The PTPA was also the first agreement in force to incorporate innovative disciplines concerning the protection of the environment and labor rights, outlined in the Bipartisan Agreement on Trade Policy developed by Congressional leaders on May 10, 2007. Additionally, the PTPA: (1) establishes an Environmental Affairs Council and an Environmental Cooperation Commission to review implementation of the agreement's environmental provisions; (2) includes an Annex on Forest Sector Governance, which outlines concrete steps to be taken to strengthen forest sector governance and combat illegal logging and illegal trade in timber and wildlife products; and (3) creates a Labor Affairs Council, through which the United States and Peru have worked closely to ensure effective implementation of the Agreement's chapter on labor.

The PTPA establishes a Free Trade Commission, which meets regularly to review the functioning of the Agreement and address outstanding issues. The United States has worked effectively with Peru to address key U.S. priorities, including progress in eliminating child and forced labor and the strengthening of forest sector oversight.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Peru's World Trade Organization (WTO) bound tariff rate averaged 29.5 percent in 2017 (latest data available), and its Most Favored Nation (MFN) applied tariff rate averaged 2.4 percent in 2017 (latest data available). All duties for PTPA-originating U.S. consumer and industrial goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with its PTPA commitments, Peru has eliminated its price band system on several U.S. agricultural products.

Taxes

A 40 percent excise tax applies to imports of used cars and trucks, up from 30 percent before 2018, except for those fueled by either natural gas or bi-fueled by natural gas and gasoline, which are subject to a 10 percent excise tax. Used cars or trucks that undergo refurbishment in an industrial center in the south of the country (those located in Ilo, Matarani, or Tacna) are subject to a 40 percent excise tax after importation unless the units are switched to either natural gas or bi-fueled units, which are then subject to the 10 percent excise tax.

Per Supreme Decrees No. 104-2004-EF and No. 092-2013-EF, Peru levies a specific 1.50 Peruvian *Nuevo Sol* (PEN) per liter excise tax (ISC) on domestically produced Pisco, while imported distilled spirits face a higher specific or *ad-valorem* ISC based on alcohol content. Per Decree No. 093-2018-EF from May 2018 3.40 PEN/liter or 40 percent *ad valorem* for beverages containing 20 percent or more alcohol by volume. Given the higher effective tax rate on imported spirits, U.S. distilled spirits products are at a competitive disadvantage in the Peruvian market.

Nontariff Barriers

Peru has eliminated many of its nontariff barriers and, in accordance with its PTPA commitments, subjects remaining measures, including subsidies, to additional disciplines.

Peru currently restricts imports of certain used goods, including clothing and shoes (except as charitable donations), medical devices (except by individual physicians for their own use), tires, cars over five years old, vehicles with more than eight seats and a gross weight over five tons, and trucks more than two years old weighing more than 12 tons.

Supreme Decrees No. 011-2016-SA and No. 013-2016-SA, which both entered into force in August 2016, establish registration processes for biologic and biosimilar pharmaceutical products respectively, closing loopholes that previously enabled registration of products as biosimilar without clinical data. Supreme Decree No. 024-2018-SA, which entered into force in September 2018, establishes bioequivalence norms, although Peru's registration and marketing approval processes for pharmaceuticals and medical devices remain slow, hampering market access.

The express shipments industry has expressed concerns over policies that appear to disproportionately penalize manifest discrepancies for low value shipments. Express delivery managers are subject to criminal penalties for discrepancies in the value of invoices of low value. Additionally, express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements for "Unhealthy" Prepackaged Food Items

The "Healthy Food Promotion Act for Children and Adolescents" (Law No. 30021), and its 2017 implementing regulations published in Supreme Decree No. 017-2017-SA, establish a mandatory front-of-pack warning statement on food labels for pre-packaged foods and beverages that surpass thresholds set by Peru for sugar, sodium, and saturated fats, and for all food products that contain trans-fats. The Act also establishes limitations on advertising and promoting such food and beverage products to children and adolescents, which include restriction on the promotion, advertising, and sale of these products in or around schools.

While supportive of Peru's public health objective of reducing obesity and related non-communicable diseases, the United States has a number of questions and concerns with Peru's approach. For example, it is not clear whether Peru considered relevant international standards or less-trade restrictive alternatives when preparing and adopting the measure to improve the quality of nutritional information provided to consumers. The United States has raised these concerns in written comments on the measure and in meetings of the WTO Technical Barriers to Trade (TBT) Committee.

In September 2017, Peru notified its Manual on Health Warnings, Prepared Pursuant to the Regulations Implementing Law No. 30021 to the WTO TBT Inquiry Point. The Manual contains technical specifications and guidelines for the inclusion of the aforementioned warnings on processed food labels and in media advertisements. In November 2017, the United States submitted written comments to Peru raising its concerns with the measures established by the Manual. In June 2018, Peru published the Manual in its federal register. Manufacturers will be permitted to use temporary stickers to comply with the Manual for 6 months starting June 2019 before needing to use packaging that conforms to the Manual starting December 2019.

In 2019, the United States will continue to monitor ongoing developments related to these issues and engage with Peru as appropriate.

Sanitary and Phytosanitary Barriers

Moratorium on Agricultural Biotechnology

In November 2011, the Peruvian Congress approved Law No. 29811. The law initiated an immediate moratorium on the cultivation and import for cultivation of genetically engineered organisms, such as seeds, and on the importation of products derived from agricultural biotechnology, because of concerns that these products may adversely affect the environment. Peru has not supported the moratorium with a risk assessment or otherwise put forward a scientific justification for it, as called for in the measure's implementing regulations. The implementing regulations also do not define tolerance levels for accidental presence of genetically engineered components in conventional planting seeds. Given Peru's zero tolerance standard, the risk of steep fines due to accidental presence is relatively high.

The United States has raised its concerns regarding the moratorium with government officials from Peru at each annual meeting of the PTPA Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2018. The United States also has raised its concerns in a number of discussions with business associations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru remained on the Watch List in the 2018 Special 301 Report.

Peru took a number of positive steps relating to intellectual property (IP) protection and enforcement, including with respect to online piracy, interagency coordination, and IP court proceedings. However, pirated and counterfeit goods continue to remain widely available in Peru and rights holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. The United States continues to call for Peru to fully implement its PTPA IP obligations and undertake IP reforms that include increasing and enhancing enforcement resources, border measures, the courts, and further increasing coordination among enforcement agencies.

GOVERNMENT PROCUREMENT

In August 2017, Peru updated its guidelines for the acquisition of goods and services in the defense sector. While Peru now appears to be authorizing military and defense entities to reach agreements with foreign vendors from the private sector through the Agencia de Compras de las Fuerzas Armadas— as well as directly with foreign state-owned entities, as has historically been the case— the degree to which this change has been implemented is unclear. Additionally, U.S. firms continue to identify corruption as a significant problem in the government procurement process in Peru. The United States will continue to engage with Peru to ensure that all procurements covered by the PTPA's provisions are conducted in a manner that is consistent with the Agreement.

Peru is neither a signatory to, nor observer of, the WTO Agreement on Government Procurement, but the PTPA contains disciplines on government procurement.

OTHER BARRIERS

Both U.S. and Peruvian firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. Representatives from U.S. and Peruvian companies also have expressed concerns about the lack of transparency and inconsistent interpretation of rules by La Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT), Peru's customs and tax agency, and Organismo Supervisor de la Inversion en Energia y Mineria (OSINERGMIN), the electricity and mining regulator.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $3.9 billion in 2018, a 22.5 percent increase ($716 million) over 2017. U.S. goods exports to the Philippines were $8.7 billion, up 3.0 percent ($256 million) from the previous year. Corresponding U.S. imports from the Philippines were $12.6 billion, up 8.4 percent. The Philippines was the United States' 32nd largest goods export market in 2018.

U.S. exports of services to the Philippines were an estimated $3.0 billion in 2017 (latest data available) and U.S. imports were $6.5 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $4.2 billion in 2016 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $34 million.

U.S. foreign direct investment (FDI) in the Philippines (stock) was $7.1 billion in 2017 (latest data available), a 12.5 percent increase from 2016. U.S. direct investment in the Philippines is led by manufacturing, wholesale trade, and professional, scientific, and technical services.

TRADE AGREEMENTS

The Philippines is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension the Philippines, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand, which have eroded the competitiveness of U.S. products in the Philippines. In November 2017, the Philippines and other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. The Philippines has only one bilateral free trade agreement, the Japan-Philippines Economic Partnership Agreement, which was signed in 2006. The Philippines is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand. The Philippines also has a free trade agreement with the European Free Trade Association countries and is negotiating an FTA with the European Union.

IMPORT POLICIES

Tariffs

The Philippines' Most Favored Nation (MFN) applied tariff rate averaged 7.78 percent in 2018. All agricultural tariffs and 61.9 percent of non-agricultural tariff lines are bound under the Philippines' WTO commitments. The Philippines' simple average WTO bound tariff is 23.5 percent. Products with unbound tariffs include certain automobiles, chemicals, plastic, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), are between 7 percent and 15 percent (except dates and figs, which have a 3 percent MFN applied tariff). WTO bound rates are much higher at 35 percent and 50 percent, including for fresh potatoes at 40 percent.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines imposes a TRQ on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products. In-quota tariffs are as high as 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by coffee, poultry, and potatoes at 40 percent. The in-quota tariff for corn and rice is 35 percent, while pork, coffee, and coffee extracts have in-quota tariffs of 30 percent. In April 2018, the Philippines reduced in-quota rates for chipping potatoes to three percent at the request of local snack food manufacturers disadvantaged by the high Philippine tariffs compared to other ASEAN countries. Since 2005, the Philippines has usually maintained MAV levels at its Uruguay Round commitments despite dramatically increasing demand in the Philippines market for products subject to the MAV. The Philippine government increases in-quota volumes of affected MAV commodities in times of shortages, but because of its lack of predictability, the practice does not serve to relax the Philippines' restrictive agricultural import regime.

Nontariff Barriers

Quantitative Restrictions

Pursuant to Annex 5 of the WTO Agreement on Agriculture, the Philippines maintained a rice quota of 350,000 metric tons (MT) until the special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippines rice quantitative restrictions until July 1, 2017. In exchange for the extension, the Philippines cut its MFN rice import tariff from 40 percent to 35 percent, and increased the MAV quota from MT 350,000 to MT 805,200. In connection with the WTO approval of the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines reduced tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, poultry, and walnuts.

The Philippines did not pursue an extension of its WTO waiver in 2017 and instead began consideration of legislation to convert its rice quotas into tariffs. The Philippine President issued Executive Order 23 in May 2017, which unilaterally extended tariff concessions (*e.g.*, for mechanically deboned poultry meat) until December 31, 2020, or until the Philippines enacts a law on tariffication of rice, whichever occurs first. In February 2019, President Duterte signed the rice tariffication legislation into law.

The United States has urged the Philippines to maintain the 2014 tariff concessions. As part of an October 2018 Joint Statement concluded under the United States-Philippines Trade and Investment Framework Agreement, the Philippines recognized the U.S. interest in the extension of Philippine tariff rates on certain agricultural products. The Philippines also committed to expeditious consideration of petitions for the extension of such rates, consistent with established procedural rules. Importers of U.S. meat products filed with the Philippine Tariff Commission a petition to maintain concessionary rates on poultry products, including mechanically deboned meat, covered by the June 2014 agreement. The United States continues to monitor the outcome of the Tariff Commission procedure.

Automobile Sector

The Philippines continues to apply high tariffs on finished automobiles and motorcycles, including a 30 percent tariff on passenger cars; tariffs of 20 percent to 30 percent on vehicles for the transport of goods; and tariffs of 15 perccent to 20 percent on vehicles for the transport of 10 or more persons, depending on vehicle weight. New vehicle imports from ASEAN countries, Korea, and Japan benefit from preferential tariffs under the Philippines' FTAs. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments.

The Philippines Motor Vehicle Development Program, implemented by the Board of Investments, is designed to spur exports and encourage local assembly through low tariffs on components. A one percent tariff applies to complete knock-down kits imported by registered participants. Separately, the Philippines prohibits the importation of used motor vehicles and parts.

Customs Barriers and Trade Facilitation

Reports of corruption and irregularities in customs processing persist, including undue and costly delays (irregularities in the valuation process, 100 percent inspection and testing of some products, and customs officials seeking the payment of unrecorded facilitation fees). Some importers have reported that the Philippines Bureau of Customs continues to use reference prices for the valuation of meat and poultry products in a manner that appears inconsistent with the WTO Customs Valuation Agreement. In August 2018, the Philippines customs commissioner issued an internal memorandum to customs collectors reminding them of their general legal obligation to assess duties on the basis of transactions value. As part of the October 2018 Joint Statement, the United States welcomed the Philippines' efforts to ensure the WTO-consistent valuation of agricultural imports for duty collection purposes, including the enforcement of laws, regulations, and policies prohibiting the use of reference pricing.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with UNECE standards. Under the U.S.-Philippine Joint Statement issued in October 2018, both governments pledged to cooperate on the implementation of a U.S. work program in the context of the ASEAN-United States Trade and Investment Framework Arrangement on automotive standards issues. The United States also recognized the Philippines' commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including, among others, the U.S. Federal Motor Vehicle Safety Standards (FMVSS).

Sanitary and Phytosanitary Barriers

Cold Chain Regulations

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets, which has the effect of imposing more burdensome requirements on the sale of frozen meat, which includes imported meat, than it does on the sale of freshly slaughtered meat, which is only from animals raised domestically. Seeking to address this issue and given the wider importance of the cold chain in the Philippines, the United States and the Philippines announced as part of the October 2018 Joint Statement their intent to collaborate on the development of cold chain requirements and best practices in the Philippines, taking into account international guidelines and codes of practice regarding food hygiene adopted by the Codex Alimentarius Commission. This work will build on private sector and local efforts already underway in the Philippines to improve the existing cold chain.

Import Clearance

The Philippines Department of Agriculture (DA) requires importers to obtain a sanitary and phytosanitary permit prior to shipment of any agricultural product and to transmit the permit to the exporter. This requirement adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. Since December 1, 2016, the process for import permits has included an additional requirement that permits be signed by the Secretary of Agriculture, or his designated representative, introducing some delays in the online application procedure.

Agricultural Biotechnology

In response to a December 2015 decision by the Philippine Supreme Court, the Philippines adopted in October 2016 a Joint Department Circular for the import of genetically engineered crops that requires the approval of five agencies (Departments of Agriculture; Health; Science and Technology; Environment and Natural Resources; and Interior and Local Government). Permits for a large number of previously approved biotechnology traits lapsed during the time since the Supreme Court decision striking down rules governing biotechnology, and their renewal applications under the new Joint Department Circular are still in the approval process, which is taking longer than anticipated.

SUBSIDIES

Export Subsidies

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives are available to firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. The available incentives include: income tax holidays or exemptions from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday period, payment of a 5-percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and zero percent value-added tax (VAT) rate on local purchases, including telecommunications, electricity, water, and lease of building. Additionally, under the Export Development Act, exporters are entitled to tax credits, starting from 2.5 percent for the first 5-percent increase in annual export revenue, and an additional 5 percent and 7.5 percent for the next two succeeding 5-percent increases in annual export revenues.

Separately, the Omnibus Investments Code offers various incentives to firms with more than 40 percent foreign ownership that export at least 70 percent of production, and Filipino-owned firms (defined as firms with more than 60-percent Filipino ownership) that export 50 percent of production.

GOVERNMENT PROCUREMENT

Under laws dating back to the Flag Act of 1936, as well as the Foreign Investment Negative List, the government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Eligibility requirements specify minimum Filipino ownership requirements for suppliers/contractors of goods (60 percent), infrastructure (75 percent), and consulting services (60 percent). Domestic goods also enjoy preferential treatment over imported products in the bid evaluation process. A 1993 executive order directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade arrangements equivalent to at least 50 percent of the value of supply contracts exceeding $1 million for the purchase of foreign capital equipment, machinery, materials, goods, and services.

The Philippines is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

There have been improvements in the Philippines' intellectual property rights (IPR) environment in recent years. Nonetheless, U.S. rights holders report some concerns, including increasing online piracy, counterfeit drugs, counterfeit clothing apparel, and weak provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. U.S. rights holders have also expressed concerns about the continued availability of pirated and counterfeit goods in the Philippines, high cost of conducting raids, slow investigation of IPR-related cases by the Department of Justice, and judicial inexperience in handling IPR enforcement cases, both civil and criminal.

The United States has been monitoring the development of new regulations related to geographical indications (GI), including potential impacts on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines has committed "to protect GIs in a manner mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names." In addition, the statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs.

SERVICES BARRIERS

Audiovisual Services

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting. Additionally, foreign equity in private radio communications networks is limited to 40 percent under 2018 changes to the Foreign Investment Negative List.

Express Delivery

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Financial Services

Although qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, ownership restrictions apply to non-bank investors. Foreign individuals and non-bank enterprises may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices each. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Insurance Services

The Insurance Code provides that all insurance companies operating in the Philippines, before entering into outward foreign reinsurance arrangements, must first seek to cede excess risks to other insurance companies authorized to do business in the country. Moreover, insurance companies operating in the country must also cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Generally, only the state-owned Government Service Insurance System (GSIS) may provide insurance for government-funded projects. A 1994 executive order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from this insurance system, at least to the extent of the government's interest.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity. The Philippines implemented this constitutional provision through the Public Service Law of 1936, as amended. However, the 80-year old law defines "public utility" broadly, and the government has subjected a wide range of public services – including transportation and telecommunications – to the constitutionally mandated 40 percent foreign ownership limit. If a proposed legislative amendment to the definition in the law is enacted, only electricity transmission and distribution, gas and petroleum distribution systems, water pipeline distribution systems, and sewage systems would be considered public utilities subject to the 40 percent foreign ownership cap.

Professional Services

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations provide for exceptions on the basis of reciprocity, such as medicine, pharmacy, nursing, and engineering. The practice of law, radiology and x-ray technology, criminology, and marine deck and engine officers are still reserved to Philippine citizens.

Advertising Services

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Retail Services

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-in capital of $2.5 million or more, an $830,000 minimum investment per store, and parent company net worth of over $200 million. In addition, the retailer must either own at least five other retail stores or have at least one outlet with capitalization of $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is $250,000, and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

Telecommunications Services

Philippine regulators have defined telecommunications services as a public utility. As such, the Philippine Constitution limits foreign-equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. Proposed priority legislation seeking to amend the Public Service Law of 1936 to exempt telecommunications from the definition of a "public utility" has passed the Philippine House of Representatives and is pending in the Philippine Senate.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Internet Services

The current Foreign Investment Negative List, adopted in 2018, allows 100 percent foreign equity in Internet businesses, defined as Internet access providers that merely serve as carriers for transmitting messages and are not engaged in information creation.

While U.S. cloud service providers (CSP) Amazon Web Services (AWS), Google, IBM, and Microsoft are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology (DICT). These restrictions could prevent Philippine government agencies from accessing best-in-class cloud services. In addition, procurement rules under Republic Act 9184 require CSPs to partner with a 60 percent Philippine-owned company to enter in to a government contract. Removing limitations on foreign participation in the information and communications technology sector has been a longstanding U.S. request, as such restrictions limit commercial opportunities for U.S. firms. A proposed amendment to the Public Services Act that would relax this requirement is still pending in the Philippine congress.

App-Based Services

The Philippines has established a restrictive regulatory framework for transportation network vehicle services (TNVS) or online ride-hailing mobile applications. In 2017, the Land Transportation Franchising and Regulatory Board (LTFRB) limited the number of active drivers on ride-sharing platforms, resulting in a shortage of supply and poor service. Other regulations have put maximum limits on dynamic pricing and minimum limits on driver hours. Together, these restrictions reduce the value that these services are able to provide to consumers and undermine the competitiveness of these services *vis-a-vis* local alternatives.

INVESTMENT BARRIERS

Performance Requirements

In 2015, the Board of Investments implemented a six-year Comprehensive Automotive Resurgence Strategy (CARS) program that aims to revive the domestic automotive industry by providing approximately $200 million worth of fiscal incentives each to three qualified domestic carmakers and parts manufacturers. Registered participants must comply with performance-based terms and conditions, including minimum output of 200,000 car units within the program period and domestic production of body shells and large plastic parts assemblies. In June 2017, the Board of Investments allocated the funds for the third and final slot to the government's public utility vehicle modernization program.

Limitations on Foreign Equity Participation

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List (FINL), last updated in October 2018, enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small- and medium-sized enterprises. Foreign investment in sectors from the negative list may be prohibited outright (*e.g.*, mass media, practice of professions – in particular, fields such as radiology, law, and technology, small-scale mining, cooperatives) or subject to limitation (*e.g.*, natural resource extraction).

The amended FINL increased some foreign ownership limits, including for contracts involving construction and repair of locally-funded public works (from 25 percent to 40 percent) and private radio communication networks (from 20 percent to 40 percent). The Philippine Securities and Exchange Commission monitors corporations' compliance with the foreign equity restrictions mandated under the FINL. The FINL retained authorization for 100 percent foreign equity participation other areas, including internet access providers; wellness centers; and teaching in higher education levels except of professional subjects included in government board or bar examinations; and entities outside the formal education system providing short-term high skills training.

Trade-Related Investment Measures

The Board of Investments imposes a higher export performance requirement on foreign-owned enterprises (70 percent of production) than on Philippine-owned companies (50 percent of production) when providing incentives under the Investment Priorities Plan.

OTHER BARRIERS

Bribery and Corruption

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking, as well as the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $2.9 billion in 2018, a 48.0 percent increase ($925 million) over 2017. U.S. goods exports to Qatar were $4.4 billion, up 41.6 percent ($1.3 billion) from the previous year. Corresponding U.S. imports from Qatar were $1.6 billion, up 31.3 percent. Qatar was the United States' 47th largest goods export market in 2018.

Sales of services in Qatar by majority U.S.-owned affiliates were $595 million in 2016 (latest data available), while sales of services in the United States by majority Qatar-owned firms were $338 million.

U.S. foreign direct investment (FDI) in Qatar (stock) was $8.2 billion in 2017 (latest data available), a 3.1 percent increase from 2016.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Qatar's exceptions include alcohol (100 percent), tobacco (100 percent), urea and ammonia (30 percent), steel and cement (20 percent), and musical records and instruments (15 percent). Wheat, flour, rice, feed grains, and powdered milk are exempt from custom duties, in addition to more than 600 other goods.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent) and tobacco products. However, as of 2018 not all GCC Member States have implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax. In May 2017, Qatar approved a draft decision to issue executive regulations for the implementation of selective excise taxes. In December 2018, Qatar approved Law 25, which sets excise taxes for tobacco and energy drinks at 100 percent and for sugary beverages at 50 percent. This law is expected to enter into force in 2019.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State as well. In May 2017, Qatar approved a draft law on the VAT, but has not committed to an implementation timeline. Qatar is not expected to apply the VAT until at least early 2019.

Nontariff Barriers

Import Bans and Import Licensing

An import license is required for the importation of most products. Qatar issues import licenses to Qatari citizens, Qatari partners in limited liability companies, or to foreign-owned entities operating in Qatar and registered with the Ministry of Commerce and Industry. Qatar has on occasion established special import procedures through government-owned companies to address increases in demand. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. In the telecommunications sector, commercially registered companies in Qatar can import telecommunication equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork, pork products, and alcohol.

Customs Barriers and Trade Facilitation

Qatar ratified the WTO Trade Facilitation Agreement (TFA) in June 2017. Qatar has availed itself of the flexibilities for developing countries in Section II of the Agreement and has notified its Category A commitments. However, Qatar has not yet designated the remaining commitments in Section I, and Category B commitments with definitive dates were due by February 2018. Further, Qatar designated all four of the transparency provisions in Section I as Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

Consularization Requirement

In order to clear goods from customs zones at ports or land boundaries in Qatar, importers must submit a variety of documents, including a detailed customs declaration, bill of lading, certificate of origin, *pro forma* invoice and import license. The Qatari Embassy, Qatari Consulate or Qatari Chamber of Commerce in the United States must authenticate import documentation for imports from the United States. This consularization requirement is burdensome and costly to U.S. exporters.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC "G" mark in an effort to "unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers." U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex Alimentarius Commission (Codex), the International Plant Protection Convention, or the World Organization for Animal Health (OIE). As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

Qatar provides a 10 percent price preference for domestic goods and a 5 percent price preference for GCC goods. In addition, the Ministry of Finance provides a 30 percent set-aside for domestic small and medium-sized enterprises and requires that all ministries and government entities provide a preference for domestic goods for day-to-day operational requirements. In October 2017, in the context of the ongoing Gulf political dispute and Qatar's subsequent efforts to increase economic self-sufficiency, the Qatari government issued a directive requiring all government entities to increase their procurement of domestic products to 100 percent, provided these domestic goods meet the necessary specifications and comply with tendering rules.

Qatar is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Financial Services

Although foreign banks are permitted to open branches and are authorized to conduct most types of business in the Qatar Financial Centre (QFC), including provision of Islamic banking services, foreign banks are not allowed to offer retail banking services. Laws and regulations applied to foreign banks registered in the QFC differ from the ones adopted by the Qatar Central Bank for domestic banks, and more closely resemble international standards.

Distribution Services

Only Qatari entities are allowed to serve as local agents or sponsors, except in the industrial, tourism, education, health, and agricultural sectors. Additionally, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the Qatari government.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Qatar requires businesses to obtain a license to provide Voice over Internet Protocol (VoIP) services and only grants such licenses to companies looking to register in Qatar. This requirement serves as a market access barrier for foreign or internet based communications service providers, which are able to operate in most markets on a cross-border basis without a license. Thus far, two telecommunications service providers, Ooredoo and Vodafone Qatar, which are publicly traded and majority-owned by various state-controlled entities, have obtained such licenses.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

On January 7, 2019, the Amir enacted Law No. 1 of 2019 on Regulating the Investment of Non-Qatari Capital in Economic Activity. This new law allows 100 percent foreign capital investment in all sectors, except for banking, insurance, and commercial agencies. Full foreign ownership in the banking and insurance sectors remains subject to Cabinet approval. The law includes provisions on the protection of foreign investment from expropriation, the exemption of some foreign investment projects from income tax and customs duties on imports of raw materials, and the right to transfer investments without delay.

On October 30, 2018, the Amir enacted Law No. 16 of 2018 on Regulating Non-Qatari Ownership and Use of Properties, and on March 13, 2019, the Cabinet approved the law's implementing regulations. Pursuant to this legislation, non-Qatari individuals, commercial companies, and real estate investment funds will be permitted freehold ownership of real estate in 10 designated zones, and usufructuary right of real estate of up to 99 years in 16 zones. The Cabinet also agreed to allow non-Qatari ownership of residential villas within residential complexes, as well as retail outlets in certain commercial complexes. According to regulations issues in March 2019, non-Qatari real estate owners will be granted residency in Qatar for as long as they own their property. The committee on non-Qatari ownership and use of real estate, formed in December 2018 under the Ministry of Justice, is the regulator of non-Qatari real estate ownership and use.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $14.1 billion in 2018, a 41.0 percent increase ($4.1 billion) over 2017. U.S. goods exports to Russia were $6.7 billion, down 4.7 percent ($331 million) from the previous year. Corresponding U.S. imports from Russia were $20.8 billion, up 22.2 percent. Russia was the United States' 36th largest goods export market in 2018.

U.S. exports of services to Russia were an estimated $4.9 billion in 2017 (latest data available) and U.S. imports were $2.1 billion. Sales of services in Russia by majority U.S.-owned affiliates were $10.4 billion in 2016 (latest data available), while sales of services in the United States by majority Russia-owned firms were $650 million.

U.S. foreign direct investment (FDI) in Russia (stock) was $13.9 billion in 2017 (latest data available), a 4.4 percent decrease from 2016. U.S. direct investment in Russia is led by manufacturing, nonbank holding companies, and information services.

Sanctions and Countersanctions

Russian countersanctions, starting in 2014 in response to U.S. sanctions imposed on Russia as a consequence of its actions in Ukraine, have created uncertainty for American firms and reduced prospects for market penetration. Most recently, in 2018, President Putin signed a counter-sanctions bill entitled “On Measures (Countermeasures) in Response to Unfriendly Actions of the United States and/or other Foreign States.” The new bill gives the Russian government extensive authority to introduce additional counter-sanctions, including import and export bans, on products and services to/from the United States and other “unfriendly” foreign states. Although the law has been adopted, no new counter-sanctions have been implemented to date.

The U.S. Government continues to engage with industry to analyze and assess the impact of sanctions on trade in the broader context of U.S. national interests. Furthermore, because the U.S. Government has curtailed its bilateral engagement with Russia (as a result of Russia’s aggressions in Ukraine), our ability to raise and resolve market access barriers in Russia has been severely limited. Nevertheless, efforts persist to open the Russian market and to ensure fair treatment for U.S. exports and U.S. businesses.

TRADE AGREEMENTS

Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the WTO, and on December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia’s accession to the WTO signaled Russia’s movement to adopt the key WTO principles of national treatment, Most Favored Nation (MFN) treatment, transparency, and, more generally, rule of law. That progress appears to have waned, however, as reported in USTR’s “2018 Report on the Implementation and Enforcement of Russia’s WTO Commitments,” issued pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012.

Eurasian Economic Union

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. As a consequence of its membership in the EAEU, Russia's import tariff levels[15], trade-in-transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for member states and with coordinating economic integration among member states. While tariff harmonization and standardized regulatory approvals across member states have eased the process for some U.S. companies doing business within the customs union, some regulatory regimes – such as medical devices and pharmaceuticals – have not been standardized and still require approvals by the individual member states.

In May 2018, the EAEU signed an Interim Agreement to create a temporary free trade area between the EAEU and its member states and Iran. The agreement will be effective for three years.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Russia's Most Favored Nation (MFN) applied tariff rate averaged 10.2 percent for agricultural products and 6.2 percent for non-agricultural products in 2017 (latest data available). Russia's simple average WTO bound tariff rate is slightly higher at 10.9 percent for agricultural products and 7.1 percent for non-agricultural products. Russia's maximum WTO bound tariff rate for all products is 245 percent.

Although Russia implemented another round of annual tariff reductions in 2018, as required by its WTO commitments, the implementation of some of its other tariff commitments has raised concerns. Another area of concern is Russia's implementation of EEC decisions. In particular, pursuant to these decisions, Russia appears to have changed the type of duty on certain tariff lines by augmenting the *ad valorem* rates with an additional minimum specific duty (thereby creating a "combined tariff"). Under WTO rules, the resulting combined tariff must not exceed Russia's bound tariff commitments. In August 2016, a WTO panel found that Russia had applied tariffs in excess of its WTO bound rates through this mechanism, and the Dispute Settlement Body in September 2016 adopted the report and recommended that Russia bring its tariff measures into conformity with WTO rules. Russia indicated in June 2017 that it had implemented the panel's recommendations. In addition, in August 2016, Russia took the final step to join the WTO Information Technology Agreement (ITA) by notifying its modified WTO tariff schedule to reflect fully its ITA commitments.

On July 6, 2018, Russia adopted tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States in retaliation against the U.S. President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended.[16] The United States has urged Russia to work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO

[15] Currently, 60 percent of tariffs are harmonized within the EAEU.
[16] These retaliatory duties are being applied by Russia only, not by other EAEU member States.

and requested consultations with Russia. Following unsuccessful consultations in November, the United States requested the establishment of a panel. A panel was composed in January 2019.

U.S. stakeholders have raised concerns about the administration of Russia's copyright levy system. Russia collects a levy on both domestic and imported products that can be used to copy, for personal use, works protected by copyright (*e.g.*, video recorders, voice recorders, and photocopy machines). Those levies are provided to an accredited royalty collecting society for distribution to copyright holders. However, the list of domestic products on which the levies are paid appears to differ from the list of imported products on which the levies are paid, introducing the possibility of discriminatory collection of levies. In addition, the reporting and payment systems also appear to differ. Russia's customs authority provides information on imports to the Ministry of Culture, which in turn provides the information to the collecting society to verify the payment of the levies by importers; by contrast, domestic manufacturers self-report and pay based on their sales. Further, although Russia accredited a collecting society to undertake the collection of levies and distribution of royalties, U.S. stakeholders have raised concerns regarding the lack of transparency in this process. The legitimacy of that collecting society has also been challenged in Russian courts, creating uncertainty as to its credibility and reliability. U.S. officials have raised concerns about these issues with Russia's Ministry of Culture and the Ministry of Economic Development and Trade.

U.S. stakeholders report that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russia to improve transparency in this area and ensure compliance with WTO commitments.

Taxes

Russian and U.S. leasing companies have reported that the value-added tax (VAT) assessed on inputs for exported final products is often not refunded, and that they often must resort to court action to obtain their reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and that actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. In addition, the companies have reported that, in some cases, local tax inspectorates have initiated audits and attempted to seize their bank accounts, forcing exporters to seek very expensive and time-consuming court enforcement. Of further concern is Russia's rebate of VAT on payments for the "right to use" cinema products. The VAT payments on royalties paid for screening "Russian" movies (as defined in the Russian tax code) can be rebated but not VAT payments on royalties for screening U.S. (or other non-Russian) films. This practice increases the cost of screening U.S. films in Russia.

Nontariff Barriers

Import Bans

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from Australia, Canada, the European Union (EU), Norway, and the United States for a period of one year. The list of banned food includes certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, some sausages, and most prepared foods. Russia has since amended the list of products covered by the ban and expanded the list of countries whose products were banned, adding Albania, Iceland, Liechtenstein, Montenegro, and Ukraine. The ban applied to agricultural products from Ukraine only after January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU. In July 2018, Russia extended the ban until December 31, 2019. In December 2018, Russia imposed a further ban on a wide variety of imports from Ukraine (both agricultural and non-agricultural).

This ban covers not only products produced in Ukraine, but also any products transshipped through Ukraine and intended for the Russian market, thus potentially affecting U.S. exports to Russia.

Import Licensing

Although Russia simplified its licensing regimes when it became a WTO Member, the processes to obtain an import or activity license remain burdensome and opaque. For example, in its WTO accession protocol, Russia committed to undertake certain reforms to its import licensing regime for products with cryptographic functionalities ("encryption products"). However, U.S. exporters report that Russia continues to limit the importation of encryption products through the use of import licenses or one-time "notifications." Stakeholders have raised concerns regarding the process for importing consumer electronic products considered "mass market" products under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies ("Wassenaar Arrangement"). A simple notification process is supposed to apply to these products; however, the EAEU regulations governing the definition of "mass market" products do not accurately reflect the definition of such products under the Wassenaar Arrangement or Russia's WTO commitments. Moreover, the Russian requirements to meet the definition of "mass market" are burdensome and appear to go beyond what is required under the EAEU regulations. As a result, U.S. exports of encryption products, particularly common consumer electronic products, continue to be impeded.

In addition, in 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not needed an activity license to distribute. Because an activity license to distribute encryption products is required to obtain an import license for encryption products, the 2012 amendments impose an additional indirect burden on the importation of such products.

Importers of U.S. alcoholic products face uncertainty with regard to Russia's regulatory regime (*see the section below on Conformity Assessment Procedures, Standards, and Labeling for more information*). For example, when Russia became a WTO Member, it abolished the requirement to obtain an import license for alcohol. However, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) still requires an activity license to warehouse and distribute alcohol in Russia. Stakeholders assert that the difficulty and expense involved in obtaining this license is disruptive to trade, and that the license is valid for only five years. Several U.S. exporters have experienced months of delays and expended thousands of dollars seeking to bring their warehousing practices into conformity with relevant regulations after inspections raised compliance issues. As importers of U.S. alcoholic products seek to renew their activity licenses, the United States will work to ensure that Russia's alcohol warehouse licensing provisions are WTO-consistent, transparent, and not unnecessarily burdensome.

Import licenses or activity licenses to engage in wholesale and manufacturing activities are also necessary for the importation of: pharmaceuticals; explosive substances; narcotics; nuclear substances; equipment to be used at nuclear installations and corresponding services; hazardous wastes (including radioactive waste); and, some food products (*e.g.*, unprocessed products of animal origin). The process for obtaining these licenses is often unpredictable, nontransparent, time-consuming, and expensive. Similarly, Russia's opaque and burdensome activity licensing regime allows it to control access to many sectors, such as mining. U.S. officials have raised concerns about these import licensing issues with Russian and EAEU officials.

Customs Barriers and Trade Facilitation

A requirement that all customs duties, excise taxes, and VAT on alcohol be paid in advance of customs entry using a bank guarantee (or other type of deposit) is a longstanding customs challenge faced by importers of alcoholic products. Russia's customs authority often requires bank guarantees far in excess of the actual tax liability of the covered goods, especially for lower-value products. Russian law permits its customs authority to set the bank guarantee at the highest amount that could be due if the actual amount due cannot be calculated; however, stakeholders claim that information sufficient to calculate a more accurate and usually lower bank guarantee amount is generally available to, but not considered by, the Russia's customs authority. In addition, stakeholders have reported that refunds or releases of these guarantees are sometimes delayed for seven to nine months. Further, some Russia's of customs posts have interpreted EAEU rules to require both an EAEU bank guarantee as well as a Russian bank guarantee, effectively re-establishing the double bank guarantee that Russia agreed to eliminate during its WTO accession negotiations. The advance payment requirement for duties and taxes, the frequent demand for duplicative bank guarantees, and the long delay in bank guarantee refunds may limit trade volumes due to the amount of money that importers must dedicate to guarantees.

U.S. stakeholders have raised concerns that the practice of Russia's customs authority of assessing tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes, DVDs, and digital cinema packs, represents a form of double taxation because royalties are also subject to withholding, income, VAT, and remittance taxes. U.S. consumer goods companies have also reported that Russian customs authorities calculate customs duties not just on the value of the physical carrier medium, but also on royalty value of the copyright- or patent-protected content contained on the medium (*i.e.*, on the value of the proceeds of the authorized licensed use of a copyright- or patent-protected work). U.S. companies contend that this methodology leads to inflated valuations for tariff purposes.

In addition, U.S. stakeholders assert that Russia uses benchmark pricing on imports of certain types of footwear.

Russia has ratified the WTO Trade Facilitation Agreement (TFA). However, Russia is the only developed country Member that has not made the required transparency notifications under section I of that Agreement and has yet to make a notification under Article 22 of the Agreement. As a developed country member, Russia's notifications were due at entry into force of the Agreement, February 22, 2017.

Other Barriers

Russia has imposed a "recycling fee" on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) in Russia of automobiles and certain other wheeled vehicles to pay a fee, determined by the age, total mass, and engine size of the vehicle. The fee is intended to cover the cost of recycling the automobile at the end of its useful life. Special rates were introduced in 2016 for self-moving agriculture and industrial vehicles. Rates in 2018 ranged from RUB 3,400 ($56) to RUB 10.5 million ($173,067) for new vehicles and from RUB 5,200 ($85) to RUB 41.07 million ($676,978) for used vehicles. In fact, the fee was increased by, on average, 15 percent in 2018 to account for the depreciation of the ruble. Although the fee is imposed on both domestic producers and importers, concerns remain regarding the overall level and calculation of the fee for heavy duty commercial vehicles. Moreover, industry stakeholders assert that the Russian government offers a variety of subsidies to offset the recycling fee based on criteria that ensure only domestic producers, including domestic manufacturers of foreign-branded cars, receive the offset subsidies. The Russian government has proposed converting various non-tax environmental fines and recycling fees into a new environmental tax. If the environmental tax is approved, it would apply to companies that have already implemented waste disposal programs and were previously exempted from recycling fees.

Import Substitution Policies

In 2018, Russia continued to accelerate its promotion of import substitution and called for more local content across a variety of sectors. (*See the section below on Investment Barriers for more information*.)

Russian government officials, including President Putin, have signaled that import substitution is now a central tenet of Russian economic policy. The medical device, wind energy, and pharmaceutical industries are examples of sectors in which localization policies have been developed and implemented over several years. In December 2015, Russia expanded its import substitution plan for the information technology (IT) sector to identify 16 specific steps to support the domestic IT sector, such as mandating preference in government procurement for Russian-produced technology; the creation of an IT import substitution center; and, reduced insurance premiums for domestic IT firms. In addition, there are currently sectoral import substitution proposals for agriculture, pharmaceuticals/medical devices, defense, health care, consumer goods, oil and gas equipment, solar energy products, light industry, textiles, and optical fiber. Initially, the Russian government implemented these preferences primarily through government procurement (*see the section below on Government Procurement for further information*), but in 2015 extended the mandated preferences to purchases by state-owned enterprises (SOEs).

Since implementing the import ban on certain agriculture products, government officials have pressed for greater food self-sufficiency and, most recently, expansion of exports. For heavy machinery, the Minister of Industry and Trade has called for increasing the share of machinery and tool equipment produced domestically from the current 10 percent to 60 percent by 2020. Pharma 2020, the government's pharmaceutical industry development plan, calls for Russian manufacturers to account for at least 50 percent of total domestic sales (based on value) by 2020. In November 2015, Russia extended the "three's-a-crowd" localization policy to bar foreign drugs from competing in government tenders if there are two equivalent drugs available from an EAEU member state (with limited exceptions). Other healthcare-related policies that discriminate against U.S. exporters in favor of domestic producers include a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health and a 15 percent price preference for Russian (and other EAEU) companies in federal and municipal procurement auctions. In February 2015, Russia barred foreign medical device manufacturers from participating in government tenders for a specific list of medical devices (mostly low-technology goods) if two producers from an EAEU Member State participated in the tender. In December 2016, the Russian government expanded the list of covered goods to include 86 additional products (such as gauze and cotton dressings, glucometers, defibrillators, and certain types of tomography scanners).

The Ministry of Economic Development and the Ministry of Industry and Trade set the parameters for determining what constitutes domestic telecommunications equipment, and therefore what equipment can be used in specified applications or projects. The localization level depends on the scope of the research activities and technological operations carried out in Russia, resulting in localization levels from 60 percent to 70 percent. Moreover, to qualify, a company manufacturing telecommunications equipment must be a Russian resident and at least 50 percent-owned by a Russian party or entity. The manufacturer must have the legal rights to the technologies and software, possess its own production base, manufacture printing boards, and carry out final assembly of the telecommunications equipment in Russia.

Russia developed a global navigation positioning technology called GLONASS as an alternative to the U.S. GPS system. Russia's Ministry of Transport issued a rule in March 2012 requiring that GLONASS compatible satellite navigation equipment be installed on all Russian-manufactured aircraft no later than 2016, with varying deadlines depending on the use, age, and size of the aircraft. In addition, any foreign-manufactured aircraft listed in a Russian airline's Air Operator Certificate must have GLONASS or GLONASS/GPS compatible satellite navigation equipment installed by January 1, 2018, or earlier, depending on the size of the aircraft. Because U.S.-manufactured aircraft listed in a Russian airline's Air Operator Certificate are not currently configured for GLONASS, modifications to those aircraft would be necessary to meet this rule. Similarly, in the automotive sector, the EAEU technical regulations require that the ERA-GLONASS Emergency Response System (ERS) be installed in all new vehicles (whether produced in the EAEU countries or imported) starting in 2017 (but implementation has been delayed until December 31, 2019). The manufacturers and importers with vehicle-type approval certificates until the end of 2016 will be exempted from this requirement for the duration of the validity of the certificates (three years).

In 2015, the Russian government began to extend its local content requirements beyond government procurement to purchases by state-owned or state-controlled enterprises. For example, amendments to Russia's law governing SOE purchases expressly favor Russian-produced products, including by granting the Russian government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services. Other amendments established a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses. In November 2015, the Russian government issued a decree extending additional controls over the purchasing decisions of 35 of Russia's largest state-owned or controlled enterprises, including Gazprom, Rosneft, and Aeroflot. As a result, the selected SOEs' purchases of pharmaceutical, high technology, and innovative products must be coordinated with the recently established Federal Corporation on Development of Small and Medium Business to ensure that small and medium-sized enterprises (SMEs) can increase their share in procurement from large government-owned corporations. Because U.S. SMEs cannot easily enter the Russian market, these quotas effectively favor domestic SMEs. Beyond these specific procurement restrictions, Russian law further recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. (*See the section below on Government Procurement for further information*.)

Russia appears committed to continue its policies of import substitution. It has introduced a program for "Special Investment Contracts" (SICs) to focus on creating or modernizing its industrial capabilities, particularly for those products that Russia does not currently produce. SICs are intended to attract investment to Russian industries and to promote localization by foreign companies. These contracts require a minimum level of investment ($11.5 million), guarantees of a certain production volume, and a percentage of localization over the life of the contract (up to 10 years). Participation in a SIC allows a company to participate in certain Russian subsidy programs designed for domestic manufacturers, as well as entitles it to certain tax incentives.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

U.S. companies cite technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products, and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, increasing the burden and costs for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, and construction materials and equipment, in particular, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

Conformity Assessment Procedures, Standards, and Labeling

Russian regulations on alcoholic beverages continue to raise trade-related concerns. At the national level, there is a long-standing requirement to register alcoholic beverage products with the Federal Supervisory Service for Protection of Customers Rights and Human Well-Being (Rospotrebnadzor). Since 2013, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) has maintained additional notification requirements for both existing and new-to-market alcoholic beverages sold in the Russian market. Much of the information required by the FSR as part of the additional notification requirements appears duplicative of information required by Rospotrebnadzor in the registration process.

Russia also adopted new product standards for whiskey, rum, brandy, liqueurs, and vodka. Although the standards are described as voluntary, it is not clear whether those standards will, in fact, be applied as mandatory standards, introducing significant uncertainty into the market. Furthermore, industry is uncertain whether those standards will be applied to imports. In addition, the EEC has been working on draft technical regulations on Alcoholic Product Safety, which have raised concerns with respect to labeling, inclusion of expiration dates for alcoholic beverages, certification requirements, definitions, and duplicative registration requirements. Following discussions at the WTO in 2016, Russia assured WTO Members that the draft EEC regulations had been substantially revised, but a revised text has not been notified under the WTO Technical Barriers to Trade (TBT) Agreement. The United States will continue to work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments and urge Russia and the EAEU to adopt international standards or guidelines for such products.

Pharmaceuticals

The Law on Circulation of Medicines sets forth the basic regulations for biologics and biosimilars, but U.S. stakeholders continue to express concerns about implementation of the regime (*e.g.*, assessment guidelines for biosimilar drugs and determining the interchangeability of biologic drugs) creating uncertainty in the market. U.S. pharmaceutical manufacturers have raised concerns that the registration process for orphan drugs lacks clarity and is too vague to implement. They are also concerned about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical production. Russia has an insufficient number of GMP inspectors, raising the risk that some drugs will lose market access because of a backlog of inspections; in addition, stakeholders contend that Russia plans to impose higher inspection fees on foreign production sites.

Toys

The U.S. toy industry has raised concerns that the EAEU's draft technical regulation "On Safety of Toys" contains requirements that deviate from international standards and would mandate pre-market evaluations. According to the U.S. toy industry, the draft regulation does not provide any details concerning how the pre-market evaluations would operate, the standards for approval, or how the experts making the evaluation would be selected. The United States continues to raise concerns with the measure to ensure consistency with TBT obligations.

Medical Devices

In 2012, the Russian government issued a decree mandating that all medical device producers receive new registration certificates by January 1, 2014 (later extended to January 1, 2017). U.S. exporters voiced concern that most medical device manufacturers would not be able to meet this deadline and would lose access to the Russian market. In February 2017, the Russian Ministries of Health, Finance, Justice, and Economic Development agreed to extend the validity of previously issued certificates for medical devices until January 1, 2021, at which point EAEU certificates will be required. The medical device industry is also concerned about the implementation of the EAEU common market for medical devices, due January 1, 2022. Industry is concerned that current draft legislation would negatively affect the functionality of the common market.

Transparency

The United States continues to emphasize to Russia the importance of timely notifications to the WTO of draft technical regulations to enable other WTO Members to provide comments prior to finalization. The United States has used a variety of fora, including WTO TBT Committee meetings and inquiry point requests, to urge Russia to notify proposed technical regulations and conformity assessment procedures. In response, Russia notified some proposed technical regulations and conformity assessment procedures within a reasonable period of time. Despite repeated requests, Russia has not notified measures related to new registration requirements for alcoholic beverage products; certain technical standards and regulations governing the required installation of GLONASS-compatible navigational systems in civil aircraft; or revisions to amendments to the EEC's regulations governing food labeling.

In addition, the United States has raised concerns about the short comment periods provided by Russia and the EEC on draft technical regulations to ensure that the United States and interested parties have adequate time to comment. The United States will continue to urge Russia to identify and use a single inquiry point and to notify at an earlier stage proposed technical regulations and conformity assessment procedures (including proposed amendments) that may have a significant effect on trade. The United States also continues to remind Russia of its obligation to take into account comments submitted by other WTO Members.

Sanitary and Phytosanitary Barriers

As noted above, Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of agricultural trade, the issues discussed below remain market access barriers.

Beef and Beef Products

Currently, Russia bans imports from the United States of uncooked beef from cattle over the age of 30 months due to concerns about bovine spongiform encephalopathy (BSE). Russia initially imposed this ban despite the World Organization for Animal Health's (OIE) determination that the United States poses a negligible risk for BSE and therefore should not be subject to age restrictions. Further, Russia's BSE requirements have effectively closed the Russian market to all U.S. cooked beef. The United States will continue to urge Russia to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the U.S. BSE negligible risk status.

In addition, in 2013, Russia adopted a zero-tolerance policy for beta-agonists and trenbolone acetate, standards that are more stringent than the Codex Alimentarius's (Codex) maximum residue levels for beef. At this time, the United States is not aware of any risk assessments for these products. Although the United States has established a "Never Fed Beta Agonists Program," Russia's prohibition on these hormones – along with the counter sanctions – continue to preclude U.S. exporters' access to the Russian market. Russia has also adopted a near zero-tolerance for tetracycline residues in beef, a standard more stringent than Codex's maximum residue levels (MRL), but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. The United States will continue to press for the removal of these barriers to exports of U.S. beef and beef products.

Milk and Milk Products

In 2014, the United States and the Russia-Kazakhstan-Belarus Customs Union (CU) concluded negotiations on a U.S.-CU veterinary certificate for heat-treated milk products. Nevertheless, Russia has effectively banned the importation of U.S. dairy products since September 2010, when Rosselkhoznadzor (Russia's

Federal Service for Veterinary and Phytosanitary Surveillance) instructed customs officials to allow shipments only from exporters on Rosselkhoznadzor-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive also appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The United States continues to work with Russia and the other EAEU member States to eliminate the listing requirement for exporters of low-risk products, including heat-treated dairy products.

Pork and Pork Products

Russia maintains near zero-tolerance levels for tetracycline-group antibiotics, a standard that is more stringent than Codex's MRL. As part of its WTO accession commitments, Russia committed to submit a risk assessment for tetracycline antibiotics conducted in accordance with Codex methodology or to align its tetracycline standards with Codex standards. However, to date, Russia has yet to pursue either approach. Russia's adoption of a zero-tolerance for both beta-agonists and trenbolone acetate (described above), along with its on-going counter sanctions, have deterred most U.S. pork and pork products from re-entering the Russian market. The United States will continue to press for the removal of these barriers to exports of U.S. pork and pork products.

Russia also requires U.S. pork to be frozen or tested for trichinosis, a requirement that constitutes a significant impediment to exports of U.S. fresh and chilled pork to Russia. The United States does not consider these requirements related to trichinosis to be necessary because U.S. producers maintain stringent biosecurity protocols that limit the existence of trichinae in the United States to extremely low levels in commercial swine. The United States will continue to work with regulatory authorities in Russia to resolve this trade concern.

Live Pigs and Products from Blood Derived from Swine

Due to concerns about reports of porcine epidemic diarrhea (PED) virus in the United States, Russia has, since May 2014, banned imports from the United States of live swine and products of swine blood that have not been subjected to heat treatment. In June 2014, the United States requested that the trade restrictions be rescinded, offering to add a "60-day PED free" statement to the current bilateral export certificate for live swine as well as testing of pigs for PED during isolation, but the restrictions remain in place.

Poultry

Russian regulations place an upper limit on the amount of water content in chilled and frozen chicken, despite calls by stakeholders and the U.S. Government to adopt the alternative of requiring labeling regarding water content. In addition, Russia continues to ban the importation and sale of certain frozen poultry for use in baby food and special diets, but has not provided the United States with risk assessments that conform to international standards to support these various regulations related to poultry. The United States will continue to work with regulatory authorities in Russia to resolve these trade concerns. Notwithstanding Russia's 2014 broad ban on imports of various agricultural products, in 2015, Russia banned all imports of U.S. poultry meat based on unsubstantiated claims that it had detected harmful and restricted substances in U.S. poultry products and concerns over proposed changes in the poultry inspection system at certain U.S. poultry establishments. In 2015, Russia also banned imports of non-heat treated poultry products from the United States and imposed additional temporary restrictions on shipments from the United States (including transshipments) of live birds, poultry products, and hatching eggs due to detection of highly pathogenic avian influenza (HPAI), despite having made previous commitments to regionalize HPAI-related bans. The HPAI ban was lifted in February 2018.

Moreover, in June 2015, Russia suspended any movement or transit through its territory of live poultry, poultry products, and hatching eggs (except for Specific Pathogen Free eggs) shipped from the United States. This transit ban, which Russia imposed without providing a valid scientific justification, adversely affected U.S. poultry trade with other EAEU member States that had lifted HPAI-related restrictions – in particular, Kazakhstan. In August 2018, Russia lifted the 2015 transit ban, only to replace it in November 2018 with another ban on transit of U.S. poultry to Kazakhstan, citing unsubstantiated and non-scientific risks that some "unsafe" U.S. poultry might be re-exported to Russia. The 2018 ban, in turn, was lifted in January 2019, but replaced by the requirements that: (1) poultry shipments be recorded in Russia's "Mercury" cargo tracking system (an electronic certificates verification system for imported and domestically produced goods) and (2) any re-loading and transit to Kazakhstan should only take place through EU establishments accredited for the storage of products of animal origin.

Pet Food and Animal Feed

Russia requires a veterinary certificate to ship pet food and animal feed to Russia, as well as either a letter from the producer attesting to the absence of feed derived from agricultural biotechnology or a copy of the agricultural biotechnology registration provided by the Russian Ministry of Agriculture. Russia also requires inputs for pet food or animal feed imported from a third country be accompanied by an official certificate endorsed by a veterinary official of that country's national animal health agency. Additionally, Russia restricts the use of most U.S. ruminant-origin ingredients in pet foods and animal feeds, further impeding access for U.S. exports to this market and limiting the variety of available U.S. products.

Peanuts, Soybeans, and Corn

In May 2015, Russia banned the import of all U.S. peanuts due to the detection of low levels of cadmium (too low to present a human health risk) in some shipments from the United States. In February 2016, the Russian Federal Veterinary and Phytosanitary Surveillance Service announced a "temporary" suspension of imports of U.S. soybeans and corn (popcorn), without providing an adequate scientific justification for the suspension.

Agricultural Biotechnology

On June 29, 2017, Russia amended its legislation governing agricultural biotechnology, extending Russia's ban on cultivation and breeding of genetically engineered (GE) plants and animals on its territory. The resolution prohibits the importation of GE planting seeds, strengthens state control of GE organisms and products derived from such organisms, and establishes penalties for violations of this federal law. This law effectively suspends the development of any system to approve agricultural biotechnology for cultivation but permits research.

Russia has a registration system for GE food, but there are no methodological guidelines for registering agricultural biotechnology products for feed use, making it impossible for those products to be registered, and in some cases, preventing their import. Existing feed registrations are valid for only a five-year period, whereas registrations for GE food products are valid for an unlimited period. The feed registration periods remain valid for only three soybean lines and five corn lines. Registrations for all other previously registered corn and soybean lines – 17 in total – expired since the beginning of 2017. On July 3, 2018, the Ministry of Agriculture published a new set of proposed guidelines for review. The Russian government has not notified the WTO of these proposed guidelines nor published a timeline for their approval. The application fee costs on average $80,000 and applies to the first registration of GE food and feed products, and to the subsequent reregistration of feed products. This fee, in the view of U.S. stakeholders, is excessive. Furthermore, Russia still does not have a fully functioning system for approval of GE crops containing stacked agricultural biotechnology products. Rospotrebnadzor has developed a system for approval of stacked agricultural biotechnology products for food crops, but there has been no progress in the development of an approval system for feed.

Veterinary Drugs and Pathogens

Russia maintains a zero-tolerance policy for residues of those veterinary drugs that Russia has not approved, many of which are commonly used in U.S. animal production. Findings of veterinary drug residues during Russian border inspection of U.S. meat products have resulted in trade disruptions, including the de-listings of U.S. beef, pork, and poultry facilities as approved sources for exported product to Russia. Russia similarly maintains a zero-tolerance policy for all food products, including raw meat and poultry, for *Salmonella*, *Listeria*, coliforms, and colony-forming units of aerobic and anaerobic bacteria. Such a policy is unwarranted with regard to raw products because food safety experts and scientists recognize that these pathogens are often closely associated with raw meat and poultry products and cannot be removed from the product. The United States is not aware of a risk assessment from Russia to justify its more stringent standards.

Systemic Issues

In addition to the product-specific issues discussed above, U.S. exporters continue to face systemic issues related to the export of agricultural products to Russia. Russia and the EAEU require veterinary certificates to include broad statements by U.S. regulatory officials that the products satisfy EAEU sanitary and veterinary requirements, including meeting certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear excessively restrictive and appear to lack scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where there is no risk of transmission from the product in question. In other cases, Russia requires export certificates for products for which certifications are unnecessary. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential risk. The United States is also concerned with Russia's failure to remove certain veterinary control measures for lower risk products, which could raise concerns under Russia's WTO obligations.

Russia, pursuant to an EEC regulation, allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) only from facilities on a list approved by all EAEU member states. The United States has worked with Russian and other EAEU authorities to narrow the scope of products subject to this listing requirement, with some success, but much of this work remains ongoing. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied a deficiency. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate a new EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by SPS authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale. The United States will work closely with Russia to ensure that the EAEU inspection regulation is implemented fully.

SUBSIDIES

In January 2015, Prime Minister Dmitry Medvedev signed the government "Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015," (with amendments added in August 2016) commonly known as the Anti-Crisis Plan. The plan was designed to support import substitution programs, small and medium-size enterprises, and exports of non-commodity goods, and to reduce the cost of credit for businesses in key sectors and to provide funds for social programs. As part of the plan, the Russian government has identified 199 "backbone" companies to be first in line for government support, including loan subsidies, due to their size and importance to the Russian economy. The list included public, private, and foreign companies from a broad range of sectors, which together generated 70 percent of Russia's GDP in 2013 and employed 20 percent of the workforce. An analysis from the Audit Chamber (a permanent supreme audit body, accountable to the Federal Assembly of the Russian Federation) published in November 2016 found that the government has accomplished only half of the 122 action items, while a total of 19 action items were still pending. The total funding appropriated from the federal budget for the FY2016 was 464 billion rubles (approximately $8 billion). In 2016, the Russian government extended $30 million in subsidies to domestic producers of agricultural machinery (including foreign companies that qualify as domestic tax residents).

Gazprom, a publicly listed, but state-controlled Russian company, has a monopoly on exports of pipeline natural gas produced in Russia and charges higher prices on exports of natural gas than it charges to most domestic customers. U.S. stakeholders have raised concerns that Russia's natural gas pricing policies effectively operate as a subsidy to domestic industrial users in energy-intensive industries such as the steel and fertilizer industries (which use natural gas as an input). Stakeholders have also raised concerns about government subsidies to Russia's uranium enrichment industry, which they claim have allowed Rosatom, an SOE, to expand its production capacity in the face of a global surplus. According to industry reports, state-owned and state-controlled banks provide preferential loans to the steel and related industries. These loans, and other forms of state-based financial assistance, subsidize these industries and distort global competition.

Also of concern to U.S. stakeholders is a 2017 Government Decree that provides subsidies for the transportation of 3.181 million metric tons of wheat, barley, and corn from 13 regions of the Central, Volga, Ural, and Siberia Federal Districts. The measure is intended to stimulate grain exports from the regions, stabilize domestic grain prices, and support profit margins of agricultural producers. The Russian government emphasized that this support is not connected with the export of agricultural products and that it exists in certain regions to overcome the disparity between supply and demand in the domestic grain market. There is no official data on how much grain has been exported under the program; however, analysts estimate it has supported exports of around 1.5 million metric tons of grain.

GOVERNMENT PROCUREMENT

In its WTO Accession Protocol, Russia committed to requesting observer status to the WTO Committee on Government Procurement and to beginning negotiations to join the Agreement on Government Procurement (GPA) within four years of its WTO accession. Russia became an observer in May 2013, and on August 19, 2016, informed GPA Members of its intent to initiate negotiations to join the GPA. However, Russia's GPA accession negotiations only started in earnest when Russia submitted its initial offer in June 2017 and its replies to the Checklist of Issues in September 2018. When it joined the WTO, Russia committed that its government agencies would award contracts in a transparent manner according to published laws, regulations, and guidelines. Russia has adopted certain local content requirements that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) because they relate to federal or municipal government procurement. Given the breadth of the government's role in the economy and the scope of the

"Buy Russia" policies, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Government procurement restrictions began in earnest in 2014 when Russia established a 15 percent preference for a variety of goods (including, *inter alia*, certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use.

In addition, Russia banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU. On December 31, 2014, President Putin signed the Industrial Policy Law, which specifically promotes import substitution and restricts government procurement (and SOE purchases) of foreign-made products. The law went into effect on June 30, 2015, and provided a framework for the support of innovative product manufacturing, research and development subsidies, and infrastructure projects as well as implementation of the "Buy Russia" law. The law also includes provisions for financial and material support for Russian companies to boost their export potential.

To implement the Industrial Policy Law, Russia has established "local content" requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery. As a consequence, for example, some types of metalworking equipment must contain from 20 to 50 percent domestic parts, with increasing targets each subsequent year. In 2015, Russia reaffirmed the ban on government procurement of a wide range of foreign-made machinery (*e.g.*, machinery used in the construction and raw material extraction industries) and certain vehicles (*e.g.*, emergency service vehicles, bulldozers, and excavators). In addition, Russia banned government procurement of numerous foreign-made medical devices and health-related disposable goods if more than two companies from the EAEU member States submitted a bid; as noted above, the list of covered medical devices was expanded in 2016. In August 2016, the Russian government also banned a list of certain food and dairy products from non-EAEU member states for government and municipal procurement, including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar. Similarly, pursuant to amendments to Russia's national procurement law, in 2016, Russia created a registry of Russian software; foreign-made software not on the list will no longer routinely qualify for government and municipal procurement, unless there is no similar domestically produced software available. In July 2016, the Russian government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. In late September 2016, Russia imposed a ban on the procurement of a range of over 100 types of foreign-made radio-electronic products and components for state and municipal needs when there are at least two bids for similar items manufactured in Russia or an EAEU member State. In addition, Russia has created a Government Commission on Import Substitution with the mandate to support the production of priority goods, works, and services that are not currently produced in Russia. (*See the section above on Import Substitution Policies for further information.*)

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2018 Special 301 Report. The Report identified trafficking in counterfeit goods, online piracy, and the lack of intellectual property rights (IPR) enforcement actions by government authorities as some of the significant obstacles to Russia's adequate and effective protection of IPR. Russia continues to be a thriving market for counterfeit products, including consumer goods, distilled spirits, agricultural chemicals, biotechnology products, and pharmaceuticals. Russia's inadequate IPR enforcement efforts contribute to the illicit trade in counterfeit goods. Also, while Russian courts have issued injunctions against websites under the authority of antipiracy legislation, criminal prosecution of those who own and operate these illicit sites is lacking. In addition, in the pharmaceutical sector, stakeholders have raised concerns about insufficient protection against unfair commercial use and unauthorized disclosure of regulatory or test data, as well as Russia's significantly inadequate patent protection generally. Finally, stakeholders have also identified illegal camcording, large-scale online piracy of technical and scientific books and journals, ineffective protection of trade secrets, and an inadequate collective management regime as significant concerns.

SERVICES BARRIERS

Financial Services

Russia continues to prohibit foreign banks from establishing branches in Russia. Moreover, the Central Bank of Russia (CBR) established the National System of Payment Cards (NSPC) in July 2014 to handle the processing of all domestic credit card transactions; the NSPC also launched a domestic credit card "Mir" in 2015. This new procedure has introduced additional technical costs for foreign-based credit card companies, which must now transmit data for all transactions within Russia through the NSPC system, undermining a key competitive advantage of foreign payments suppliers, which was to rely on self-owned global processing platforms located outside of Russia. There are also concerns about the potential conflict of interest because the state regulator (the CBR) owns Mir.

Although Russia has raised the limit on foreign capital in the insurance sector from 25 percent to 50 percent, a lack of transparency regarding the issuance of licenses, among other issues, hinders foreign investment in the market. Stakeholders report that the process for an individual or a company to obtain a license to provide an insurance service remains difficult. There is a mandatory cession requirement that 10 percent of each reinsurance contract be offered to the recently created state-owned reinsurance company, Russia National Reinsurance Company.

Audiovisual Services

In July 2017, the Russian government moved to restrict access of foreign service providers to its online video market. Under the "VOD law" (video-on-demand), Russia limits foreign ownership, management, or control of certain online video streaming service. Russia has also enacted legislation that prohibits advertising on pay television. While having little impact on state-owned (and state-financed) television channels, this prohibition will, according to industry representatives, have a significant adverse financial impact on foreign cable and on demand service providers.

Other Services Barriers

In addition to the foregoing services barriers in Russia, there are restrictions on foreigners providing certain energy-related services and services to public utilities. Further, Russia has not yet amended its legislation to reflect its WTO commitment to remove the limitation on sales of biologically active substances to pharmacies and specialized stores only.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

In 2015, Russia adopted legislation requiring that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. (At least one sector, airline reservations, has been exempted from the localization requirement.) Russia has not issued implementing regulations, creating enormous uncertainty among both domestic and foreign companies as to the actual requirements of the law. Companies most likely affected by this law include companies seeking to serve Russia entirely on a cross-border basis as well as those that have a presence in Russia but rely extensively on centralized, capital-intensive data processing facilities located outside of Russia. Industry stakeholders are concerned the law will limit their ability to offer a variety of services in Russia.

The 2015 law not only implicates the provision of cross-border services, but it also restricts a company's options with regard to the location of its servers for storing the data. In 2016, Russia extended the data storage requirements with the "Yarovaya Amendments," requiring certain telecommunications operators to store locally metadata for six months, with longer storage requirements depending on the type of provider. Concerns have been raised that Russia does not currently have sufficient server capacity to meet the demand for local storage of all the data implicated by this law. In addition to imposing a cost burden, replicating data storage in Russia for data that was previously stored elsewhere can create cybersecurity vulnerabilities by creating another unnecessary access point into a supplier's network. To date, the Russian telecommunications watchdog, Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), has inspected more than 2,000 domestic and foreign companies for compliance with the 2015 law, typically resulting in administrative warnings or nominal fines for violations. Among other actions, in 2016, it blocked access in Russia to a U.S.-based business networking service site based on a finding of non-compliance, despite the fact that the company had no physical presence in Russia. In 2017, it blocked access to a U.S.-based application providing push-to-talk communications. In 2018, as part of its efforts to block another application providing communications, Roskomnadzor blocked numerous Internet protocol addresses associated with U.S providers of cloud services.

Restrictions on the Provision of Internet-Enabled Services

Industry representatives assert that the Yarovaya Amendments, under the guise of fighting terrorism, may require companies to assist government authorities in decrypting user communications, and prohibits encryption measures unless a decryption key is provided to the Russian authorities upon request. Industry has also raised a concern about the requirement that Russian Internet service providers (ISPs) must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia has also implemented restrictions on consumers' use of virtual private networks (VPNs), and threatened to shut off market access for ISPs that allow VPNs to exist or function without being blocked. (The Office of the United States Trade Representative is not aware, however, of any such action being taken.) U.S. companies are concerned that these provisions may require them to provide the Russian government with excessive access to citizens' private information.

Digital Products

Since December 2013, when President Putin announced support for "streamlining electronic commerce," government officials have proposed various reductions in the duty-free threshold for online purchases from non-EAEU online stores. The EEC approved new regulations for the import of goods by individuals, reducing the ceiling on duty-free purchases in foreign online stores from the current $1,100 to $570 on January 1, 2019, and to $270 on January 1, 2020. In July 2016, a law known as the Google Tax was adopted, introducing, as of January 1, 2017, a VAT of up to 18 percent on 14 types of IT market products and services, including: software applications and games databases; advertising platforms; online auctions; online retailers; data storage; hosting providers; domain registration; automated search services; and digital goods (*e.g.*, books, music, audio-visual products, graphics). In January 2017, the new law took effect for the largest online retailers and they are currently required to register with the Russian Federal Tax Service.

INVESTMENT BARRIERS

While Russia has prioritized improving its investment climate, U.S. and other foreign investors continue to cite issues, such as corruption, that act as barriers to investment. Notwithstanding the creation of an Anti-

Corruption Council and the enactment of significant anticorruption legislation, some internationally recognized corruption indices suggest there has been little progress in reducing corruption. In addition, Russia's foreign investment regulations and notification requirements can be confusing and contradictory, and have had an adverse effect on foreign investment as a result. Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority shareholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and problems with enforcing the rule of law.

The 1999 Investment Law ("the Law") contains broadly defined provisions that give Russia considerable discretion to prohibit or limit foreign investment in a potentially discriminatory fashion. For example, the Law permits the government to circumscribe investors' rights for "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons, and the defense of the state." Although the Law includes a "grandfather clause" that protects certain investment projects (those that existed as of 1999, have greater than 25 percent foreign capital participation, and total investment of more than $41 million) against certain changes in the tax regime or new limitations on foreign investment, a lack of corresponding tax and customs regulations means that effective protection afforded by this clause is, at most, very limited.

Russian law places two primary restrictions on land ownership by foreigners. First, foreign persons or entities may not own land located in border areas or other specifically assigned sensitive territories. Second, foreign citizens and foreign legal entities cannot own more than 50 percent of a plot of agricultural land (though foreign companies are permitted to lease agricultural land for up to 49 years).

Pursuant to the October 2014 law "On Mass Media," foreign investors in Russian media companies must reduce their equity in these companies to 20 percent by February 1, 2017 (the previous law applied a 50 percent limit only to Russia's broadcast sector). U.S. stakeholders have also raised concerns over limits on direct investments in the mining and mineral extraction sectors that they say discriminate against foreign companies, as well as a licensing regime they describe as non-transparent and unpredictable.

State-Owned Enterprises

Russia's numerous SOEs play a prominent role across much of Russia's economy. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field can be distorted in favor of SOEs as a result of these enterprises' lack of transparency and lack of independence; unclear responsibilities of their boards of directors; misalignment of managers' incentives and company performance; inadequate control mechanisms on managers' total remuneration or their use of assets transferred by the government to the SOE; and minimal disclosure requirements. In December 2014, the government reversed a prohibition against senior government officials serving on the boards of state enterprises, further tilting the playing field in favor of state-owned or state-controlled enterprises by re-introducing a governmental or political voice in the companies' decision-making processes. Government ministers or deputy ministers currently chair the boards of Russian Railways, RusHydro, Rostelecom, Transneft, and Russian Grids (Rosseti).

A specific variant of SOEs, "state corporations", are 100 percent owned by the Russian government and operate under separate legislation and in a marketplace skewed in their favor. For example, state corporation holding structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment, while the case-by-case legal construction of state corporations (by virtue of their separate legal framework) leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises. There are currently six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

The Russian government approved a privatization program for 2017-2019 that Prime Minister Medvedev estimated would contribute RUB 17 billion ($285 million) to the federal budget. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, creating concerns about protection for minority shareholders and corporate governance.

Taxes

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code.

Local Content Requirements

Russia maintains an investment incentive regime in the automotive sector with domestic content requirements and production targets. The first program, introduced in 2005, allowed for the duty-free entry of automotive parts used in the production of vehicles that contained at least 30 percent Russian content and required that automotive manufacturers produce at least 25,000 units domestically. In December 2010, Russia initiated a second automotive industry investment incentive program that increased significantly the required domestic production volume to 300,000 units and the domestic content requirement to 60 percent. Automotive producers also had to agree to establish a research and development center in Russia and to comply with the requirement that engines and transmissions should represent 30 percent of the output in Russia. According to Russia's Auto Industry Development Strategy, localization should reach 70 percent by 2025. As part of its WTO accession protocol, Russia agreed to consult with the United States and other WTO Members on WTO-consistent measures it could take in this sector, and to end the WTO-inconsistent elements of the automotive industry incentive programs by July 1, 2018. The government is now proposing incentives for greater use of Russian-made components in cars. For example, automakers must launch engine production in 2019 to continue to receive state support. The government has also set deadlines for the assembly of automatic transmissions and electric motors for 2023 and 2026, respectively, for automakers seeking continued state support. Such local content requirements remain a barrier to U.S. exports of automotive parts, and the United States will work with Russia to eliminate the problematic elements of these programs.

OTHER BARRIERS

Export Policies

Although Russia has eliminated export duties on a few products, it maintains export duties on 240 types of products for both revenue and policy purposes. For example, a variety of products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, non-ferrous metals, hides and skins, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed strategically significant, such as hydrocarbons and certain scrap metals. However, in 2016, Russia introduced export duties on certain chemicals and anodes of the platinum group of metals. Russia has also banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry. In 2016, Russia reduced the export duty on wheat to zero percent for two years, with the stated objective of stabilizing prices in the domestic grain market. In June 2018, Russia extended the zero percent export duty on wheat by a year to July 1, 2019. Russia retains the ability to reinstate the export duty expeditiously if the need arises, contributing to uncertainty in the market.

Russia maintains a list of products that are "essentially significant for the domestic market" and thus subject to export restrictions or prohibitions. In 2015, Russia amended the list to include a variety of steel and non-ferrous metal scrap. Because Russia is a major source of scrap on global markets and a major steel producer, this addition contributed to the uncertainty of the availability of Russian scrap for export to global markets and caused concern among U.S. stakeholders of possible market distortions. Most recently, in December 2018, Russia added precious metals ores and concentrates, as well as certain waste or scrap of precious metal or of metal clad.

Historically, Russia has maintained high export duties on crude oil to encourage domestic refining. Although Russia committed to cut its export duties on oil and oil products to the level of Kazakhstan as part of the process to establish the EAEU, in late 2015, the Russian government suspended the planned duty reductions for at least one year in order to gain extra revenue in light of economic pressures. Amendments to the Tax Code signed into law on November 24, 2014, and known as "the tax maneuver," will gradually reduce export duties on oil and light oil products and increase the mineral extraction tax and export duties for refined products to compensate for the resulting loss of federal budget revenues. The change will make domestic crude more expensive for domestic refiners. Separately, the government maintains a 30 percent export tax on natural gas. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its commitment to eliminate discrepancies in such rates by July 1, 2013. Since June 2015, there have been no changes to rates or notifications sent to the WTO of elimination of differential freight rates.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was $10.5 billion in 2018, a 313.2 percent increase ($7.9 billion) over 2017. U.S. goods exports to Saudi Arabia were $13.6 billion, down 16.7 percent ($2.7 billion) from the previous year. Corresponding U.S. imports from Saudi Arabia were $24.1 billion, up 27.6 percent. Saudi Arabia was the United States' 23rd largest goods export market in 2018.

U.S. exports of services to Saudi Arabia were an estimated $9.2 billion in 2017 (latest data available) and U.S. imports were $1.2 billion. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $4.6 billion in 2016 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were $1.8 billion.

U.S. foreign direct investment (FDI) in Saudi Arabia (stock) was $11.1 billion in 2017 (latest data available), a 4.7 percent increase from 2016. U.S. direct investment in Saudi Arabia is led by nonbank holding companies, mining, and wholesale trade.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Tariff rates range from 6.5 percent to 40 percent on goods that compete with domestic industries.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products. However, as of 2018, not all GCC Member States have implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax. Saudi Arabia began to levy the taxes in July 2017.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State as well. Saudi Arabia began to apply the VAT in January 2018.

Nontariff Barriers

Import Bans and Import Licensing

Saudi Arabia prohibits the importation of 37 categories of products, such as alcohol, pork products, gambling devices, and drones. Furthermore, special approval is required for the importation of 23 categories of “restricted” products, such as pharmaceutical products, wireless equipment, and weapons/ammunition.

Customs Barriers and Trade Facilitation

U.S. private sector stakeholders have raised concerns about the policies and practices of Saudi customs, including inconsistent application of regulations, inaccurate assessment of duties, delayed clearance of goods and a lack of a mechanism for U.S. exporters to seek an advance ruling on Saudi customs procedures and regulations. However, a change in leadership at the Saudi customs authority in 2017 has reportedly led to reduced documentation requirements, shortened clearance times in major ports, and increased cooperation across Saudi trade agencies. In 2018, the Saudi customs authority continued its efforts to make customs policies and procedures more business-friendly.

Saudi Arabia ratified the WTO Trade Facilitation Agreement (TFA) in July 2016. Although it availed itself of the flexibilities for developing countries contained in Section II of the Agreement, it designated all of the commitments in Section I as Category A, meaning that they would be implemented upon entry into force of the TFA. However, even though the four Section I transparency provisions were designed as Category A, Saudi Arabia has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Over the past few years, Saudi Arabia has revised technical regulations for a variety of products relying primarily on standards developed by the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). Saudi Arabia has been increasingly reluctant to accept certain other international standards, such as those developed by U.S.-domiciled organizations through open, transparent and consensus-based processes, which may meet or exceed Saudi Arabia's objectives. Saudi Arabia's refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States. U.S. Government officials continue to engage the Saudi government on the importance of accepting international standards developed by U.S.-domiciled organizations.

Saudi Arabia is developing and implementing new energy efficiency standards for a variety of products, including vehicles, air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation that could serve as unwarranted barriers to trade. Working with the U.S. Government, some U.S.-based standards development organizations have succeeded in having their standards referenced in updated energy efficiency regulations. The United States continues to press Saudi Arabia to develop and fully implement appropriate mechanisms for stakeholder consultation in regulatory decision-making to help ensure that interested parties have opportunities to provide comments on draft regulations and to provide a reasonable time for those comments to be taken into account.

Halal Regulations

Saudi Arabia suspended imports of U.S. poultry in June 2018 due to implementation of regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process.

Labeling Requirements

Despite current Codex Alimentarius Commission (Codex) development of guidance, in September 2018, Saudi Arabia introduced a voluntary front of package labeling nutritional labelling program food products and announced later the intention to make the program mandatory by 2021. Saudi Arabia notified this program to the WTO on March 5, 2019.

Degradable Plastics

In 2016, Saudi Arabia notified WTO Members of a new technical regulation for degradable plastic products. The U.S. Government and a broad range of industries have raised concerns related to the scope of products covered and the timeline for implementation. The United States also has raised concerns about the environmental impact of some of the degradable plastics. Saudi Arabia has delayed implementation of the regulation until September 2019.

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC “G” mark in an effort to “unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers.” U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Saudi Arabia is reportedly working to implement a new conformity assessment scheme; the U.S. Government has questions about this scheme, including how it will relate to the “G” mark.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

Saudi Arabia restricts imports of U.S. beef to cattle aged 30 months or less, despite assurances that Saudi Arabia would adhere to a beef protocol negotiated with the United States, which automatically raises the age of cattle from which U.S. beef exported to Saudi Arabia is produced. Additionally, Saudi Arabia has not regionalized the United States for highly-pathogenic avian influenza (HPAI) following the World Health Organization for Animal Health (OIE) guidelines. The United States continues to press Saudi Arabia to do so.

In October 2018, Saudi Arabia proposed maximum residue limits applicable for meat, grains, and horticultural products, many of which do not conform to those set by Codex. Saudi Arabia is also considering a ban on several pesticides widely used in the United States. The United States is reviewing the current draft regulations and will continue to raise concerns with Saudi Arabia.

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex, the International Plant Protection Convention, or the OIE. As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

Foreign contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. Foreign suppliers are also required to establish a training program for Saudi nationals. However, most defense procurement is negotiated on a case-by-case basis. The Saudi government is in the process of reforming its procurement processes and policies to incorporate new ambitious goals of Saudi employment and localized production. In 2018, the Saudi government shifted away from offsets in favor of "localization" of purchases of goods and services and "Saudization" of the labor force. Previously, the government required offsets in investments equivalent to up to 40 percent of a program's value for defense contracts, depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

U.S. companies have reported long delays and difficulty in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Arabian government to freeze payments to major contractors, accruing tens of billions in arrears and leading some companies to lay off workers in order to continue operation. Despite the Saudi government's late 2016 allocation of $26.7 billion to settle such arrears, U.S. companies over the course of 2017 and 2018 continued to report significant payment delays.

Foreign companies are permitted to provide services to the Saudi Arabian government directly without a local agent and to market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce and Investment. Foreign companies solely providing services to the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry within 30 days of signing a contract.

Saudi Arabia is an observer to the WTO Committee on Government Procurement. Although Saudi Arabia committed to initiate negotiations for accession to the WTO Agreement on Government Procurement when it became a WTO Member in 2005, it has not yet begun those negotiations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2018, Saudi Arabia was listed as a Watch List country in the annual Special 301 Report in light of IP issues that represent barriers to U.S. exports and investment. While the new Saudi Authority for Intellectual Property Rights continues to work with the U.S. government on a range of issues, serious concerns remain.

During 2018, the Saudi Arabia Food and Drug Authority (SFDA) granted marketing approvals to domestic companies to produce generic versions of pharmaceutical products. The approvals reportedly relied on data from innovators that is subject to Saudi Arabia's system for protecting against the unfair commercial use, as well as the unauthorized disclosure of undisclosed test or other data that innovators generated to obtain marketing approval. The SFDA's actions have created significant concern among U.S. industry stakeholders. Additionally, in 2017, the SFDA granted a license to a local generic manufacturer for a pharmaceutical product that is under patent protection in Saudi Arabia.

U.S. software firms report that the Saudi government continues to infringe their copyrights with the use of unauthorized software on government computers that is either unlicensed or "under-licensed" (in which the licenses obtained are insufficient for the total number of software users). Other stakeholder concerns include: the failure to address rampant satellite and online piracy made available by the prominent and illicit operations of a particular broadcast and streaming service, which has spread to other countries in the region; the lack of seizure and destruction of counterfeit and piratical goods through enforcement actions by the Ministry of Commerce and Investment; and limits on the ability of the Ministry of Commerce and Investment to enter facilities suspected of involvement in the sale or manufacture of counterfeit goods, including facilities located in residential areas.

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Financial Services

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation and foreign ownership in investment banks and brokerages to 60 percent.

Insurance Services

Saudi Arabia requires that all insurance companies be locally incorporated joint-stock companies, with foreign equity limited to 60 percent. The remaining 40 percent equity must be sold to Saudis on the domestic stock market. Insurance companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

Professional Services

Entities providing certain professional services, including accounting, auditing, architecture, civil planning, healthcare, and dental or veterinary services, must have a Saudi partner. The foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. As part of its WTO accession commitments, Saudi Arabia generally allows consulting firms to establish a local office without a Saudi partner. However, foreign engineering consulting companies must have been incorporated for at least 10 years and have operations in at least four different countries to operate in Saudi Arabia without a partner.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

In 2018, Saudi Arabia's Communications and Information Technology Council (CITC) issued the Cloud Computing Regulatory Framework, which contains a data localization requirement for certain types of data. Such requirements may create market access barriers for cloud and other information and communications technology (ICT) services provided by non-Saudi businesses. The United States is also concerned that the regulatory framework may increase the burden faced by businesses by increasing Internet service provider (ISP) liability, creating new data protection and classification obligations, and requiring compliance with cybersecurity and law enforcement access provisions that depart from global norms and security standards. CITC would gain broad powers to require cloud and other ICT service providers to install and maintain governmental filtering software on their networks, potentially allowing further restrictions on other internet-based services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment is currently prohibited in 11 sectors, including oil exploration and drilling, security services, fisheries, tourist guidance services related to religious pilgrimage, and production, manufacturing and services related to military activity. In 2016, Saudi Arabia began to allow full foreign ownership of retail and wholesale businesses, removing the previous 25 percent local ownership requirement. However, foreign investors interested in such ownership are required to satisfy a number of conditions, including that they invest more than $50 million in the Saudi economy over five years. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors. In 2018, Saudi Arabia began to allow foreign ownership in businesses providing services relating to road transportation, real estate brokerage, labor recruitment, and audiovisual display.

All foreign investment in Saudi Arabia requires a license from the Saudi Arabian General Investment Authority (SAGIA), which must be renewed periodically. While SAGIA is required to grant or refuse an investment license within five days of receiving a complete application, bureaucratic impediments can delay the process. High fees for some investment licenses discourage foreign companies, especially small and medium enterprises, from entering the Saudi market. Companies can also experience bureaucratic delays after receiving their license, such as for obtaining a commercial registry or purchasing property.

Only "qualified foreign investors" (QFIs) designated by Saudi Arabia's Capital Market Authority (CMA) are permitted to buy directly shares listed on the local *Tadawul* stock exchange. To qualify as a QFI, an entity must be duly licensed or otherwise subject to oversight by a regulatory body with standards equivalent to those of the CMA and have assets under management of at least $500 million. QFIs may not own more than 10 percent of any individual company, and cumulative foreign ownership cannot exceed 10 percent of the total *Tadawul* market capitalization or 49 percent of any individual company.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $5.9 billion in 2018, a 43.6 percent decrease ($4.6 billion) over 2017. U.S. goods exports to Singapore were $33.1 billion, up 11.2 percent ($3.3 billion) from the previous year. Corresponding U.S. imports from Singapore were $27.3 billion, up 40.7 percent. Singapore was the United States' 12th largest goods export market in 2018.

U.S. exports of services to Singapore were an estimated $18.0 billion in 2017 (latest data available) and U.S. imports were $7.9 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $77.8 billion in 2016 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $6.5 billion.

U.S. foreign direct investment (FDI) in Singapore (stock) was $274.3 billion in 2017 (latest data available), a 7.4 percent increase from 2016. U.S. direct investment in Singapore is led by nonbank holding companies, wholesale trade, and manufacturing.

TRADE AGREEMENTS

The United States-Singapore Free Trade Agreement (FTA) entered into force in 2004, and the two countries meet regularly to review implementation of the agreement.

Singapore is party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Singapore, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions, including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Singapore and the other ASEAN countries signed a free trade agreement (FTA) with Hong Kong, but it is not yet in force. Singapore has many bilateral FTAs, including those with Australia, China, Costa Rica, India, Japan, Jordan, Korea, New Zealand, Panama, Peru, Sri Lanka, and Turkey. Singapore is also participating in Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, Japan, Korea, India, and New Zealand. In July 2018, Singapore ratified the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which entered into force on December 30, 2018.

In October 2018, Singapore signed an FTA with the European Union, which is expected to enter into force in 2019. The following month, Singapore and China signed an agreement upgrading their existing FTA. Singapore is negotiating an upgrade to its FTAs with India and Japan, as well as new FTAs with the Eurasian Economic Union, the Pacific Alliance, and the Southern Common Market in South America (Mercosur). Singapore participates in several regional FTAs, including the European Free Trade Association-Singapore FTA and the Gulf Cooperation Council-Singapore FTA.

IMPORT POLICIES

Tariffs

All U.S. exports to Singapore under the FTA are duty free.

SANITARY AND PHYTOSANITARY BARRIERS

Beef, Pork, and Poultry Pathogen Reduction Treatments

Prior to 2012, Singapore's Agri-Food and Veterinary Authority (AVA) prohibited the use of all pathogen reduction treatments (PRTs) in the production of beef, pork, and poultry products sold in Singapore, which effectively limited the number of U.S. suppliers that could export frozen meat into the country. Although Singapore now permits the use of nine PRTs on fresh, chilled, and frozen meat and poultry, U.S. industry is hopeful additional PRTs can be approved in the near future pursuant to a 2016 bilateral letter exchange on sanitary and phytosanitary (SPS) issues. One of the key and still unapproved PRTs in Singapore is hypobromous acid (HOBr). As over 60 percent of beef plants in the United States reportedly use HOBr, AVA approval of this PRT (in particular) would greatly strengthen bilateral trade.

Pork - Trichinae and Permissible Time Limits

Singapore requires U.S. pork exports to be frozen or tested for trichinosis, even though U.S. producers maintain stringent biosecurity protocols that limit the presence of trichinae in U.S. commercial swine to extremely low levels. U.S. industry sources note that the requirement delays export by two to three weeks, adding to inventory and related costs (including expensive trichinae testing). Singapore also imposes overly-restrictive requirements on frozen and processed meat and poultry products that limit the time after slaughter or manufacture that a product may arrive in Singapore. On February 4, 2016, as part of the bilateral letter exchange on SPS issues, the United States and Singapore agreed to establish a Bilateral Cooperative Mechanism on Pork Trade to serve as a forum for consultations between Singapore and the United States with respect to pork-related trade issues, including trichinella-related mitigations during shipment and the length of time after slaughter within which pork and pork meat products from the United States are allowed to enter Singapore. Under the terms of the letter exchange, the United States and Singapore will work to reach agreement to resolve these issues as soon as possible. Most recently, USDA proposed using a PQA-Plus export verification program to address Singapore's concerns, but regulators have not yet reached agreement on the proposal.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Singapore aspires to become an innovation center and has made it a national priority to establish itself as a regional intellectual property hub. Despite Singapore's strong record on intellectual property protection and enforcement, and recent targeted efforts that contributed to a reduction in the rate of unlicensed software use in Singapore, U.S. stakeholders continue to raise concerns, including limitations of trade secrets protection, weak enforcement against infringing goods transshipped through Singapore, and insufficient deterrent penalties for end-user software piracy. U.S. stakeholders also cite use of unauthorized streaming services and third-party illicit streaming devices to access pirated content as a major concern.

In October 2018, the Intellectual Property Office of Singapore (IPOS) solicited feedback on draft rules covering geographical indications, including the establishment of a new Registry of Geographical Indications, as part of its obligations under the European Union-Singapore FTA. The United States looks to Singapore to continue to provide meaningful opportunities for stakeholder input with respect to any potential amendments to its regime for intellectual property protection and enforcement.

SERVICES BARRIERS

Audiovisual Services

Pay Television

In 2011, the Media Development Authority (MDA), now the Info-communications Media Development Authority of Singapore (IMDA), implemented regulations requiring pay television providers to "cross carry" exclusive broadcasting content acquired after March 12, 2010. These rules require a pay television company with an exclusive contract for channels or content to offer that content to subscribers of other pay television suppliers over those suppliers' networks at the same retail rates. U.S. content providers remain concerned about the negative impact these regulations have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market.

The United States will continue to engage with Singapore to address this issue. In particular, the United States will discourage Singapore from applying these cross carry requirements to suppliers using the burgeoning "over-the-top" (OTT) model, serving subscribers through the Internet, rather than through dedicated cable or satellite networks. Although these rules were adopted to obviate the need for subscribers seeking to access content provided exclusively on a rival network to subscribe to two cable networks, the proliferation of competitive Internet-based options and OTT streaming content has significantly reduced the consumer burden of having multiple accounts, undermining such a rationale.

Satellite Television

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. IMDA licenses the installation, or operation of, broadcast receiving equipment, including satellite dishes for television reception. Parties who require television services received via satellite need to apply for a TV Receive-Only System License, which is given only to organizations, such as financial institutions, that need to access time-sensitive information for business decisions.

Financial Services

Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore are permitted to provide ATM services to locally issued credit card holders only through their own networks or through a foreign bank's shared ATM network. QFBs, however, can negotiate with local banks on a commercial basis to let their credit card holders obtain cash advances through the local banks' ATM networks.

The Minister in charge of the Monetary Authority of Singapore (MAS) must approve a merger or takeover of a bank incorporated in Singapore or of a financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds–5 percent, 12 percent, and 20 percent. One important consideration in this approval process is the government's policy of maintaining local banks' market share at no less than 50 percent of total resident deposits. With respect to expansion of business within Singapore, MAS will consider awarding new QFB privileges to foreign banks of FTA partner countries where there are substantial benefits to Singapore.

Healthcare Services

U.S. stakeholders have expressed interest in greater transparency regarding Ministry of Health procurement process, subsidy policies, and procedural rules regarding medical devices, and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

Professional Services

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by hiring, or entering into partnership with, Singapore-qualified lawyers. In order to advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture), or get licensed as a Qualifying Foreign Law Practice (QFLP). QFLP licenses are limited (ten have been issued since 2008, nine are still active), and according to the Ministry of Law, the QFLP scheme is not currently open for application and there are no details available regarding further rounds of applications.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was $3.0 billion in 2018, a 8.4 percent increase ($230 million) over 2017. U.S. goods exports to South Africa were $5.5 billion, up 9.9 percent ($497 million) from the previous year. Corresponding U.S. imports from South Africa were $8.5 billion, up 9.4 percent. South Africa was the United States' 42nd largest goods export market in 2018.

U.S. exports of services to South Africa were an estimated $2.9 billion in 2017 (latest data available) and U.S. imports were $1.9 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $6.3 billion in 2016 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $499 million.

U.S. foreign direct investment (FDI) in South Africa (stock) was $7.3 billion in 2017 (latest data available), a 10.1 percent increase from 2016. U.S. direct investment in South Africa is led by manufacturing, professional, scientific, and technical services, and wholesale trade.

TRADE AGREEMENTS

South Africa is a member of the Southern African Development Community (SADC) and the Southern African Customs Union (SACU), which also includes Botswana, Eswatini, Lesotho and Namibia. As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa sets the level of World Trade Organization (WTO) Most Favored Nation (MFN) tariffs applied by all SACU countries, and manages all matters related to trade remedies and disputes for the SACU countries. South Africa ratified the African Continental Free Trade Agreement (AfCFTA) although the agreement is not yet in force.

South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area, and SADC. The European Union-South African Trade and Development Cooperation Agreement (TDCA) of 1999 covers a significant amount of South Africa-EU trade. In 2014, South Africa concluded negotiations for a SADC Economic Partnership Agreement (EPA) with the EU, which entered into provisional application in October 2016. SADC EPA partner countries include Botswana, Eswatini, Lesotho, Mozambique, Namibia, and South Africa. Angola is an observer to the agreement.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

South Africa’s Most Favored Nation (MFN) applied tariff rate averaged 7.6 percent in 2017 (latest data available). South Africa’s simple average WTO bound tariff rate is significantly higher at 39.1 percent for agricultural products and 15.7 percent for non-agricultural products. South Africa’s maximum WTO bound tariff rate for industrial products is 50 percent, while its maximum WTO bound tariff rate for agricultural products is 597 percent.

U.S. exports face a disadvantage compared to EU goods in South Africa. South Africa’s tariffs applied to imports from the EU on TDCA-covered tariff lines average 4.5 percent based on an unweighted average.

The MFN duty rate, which applies to imports from the United States, averages 18.4 percent for the same TDCA-covered lines. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, motor vehicles, and agricultural products and machinery.

The EU-SADC EPA further erodes U.S. export competitiveness in South Africa and the region due to the greater disparities in tariff levels that U.S. exports will face under the EPA compared to the TDCA. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa noting the unilateral benefits the United States offers South African imports under the African Growth and Opportunity Act.

In recent years, the South African government has encouraged domestic industry to appeal for increases up to the WTO bound tariff rates where a lack of global competitiveness was a concern. In September 2013, in response to requests from its domestic industry, the South African International Trade Administration Commission (ITAC) increased applied import duties for whole chickens to the maximum WTO bound rate of 82 percent, and implemented import duty increases for other poultry products, including an increase in duties to 37 percent for imports of frozen bone-in chicken. Imports of U.S. frozen bone-in chicken are also subject to antidumping duties, which are currently set at R9.40 per kilogram (approximately $0.33 per pound). In March 2017, at the request of local industry, ITAC initiated a sunset review of the existing anti-dumping duty and determined, in November 2017, to continue imposing the anti-dumping duties for frozen bone-in portions of chicken originating in or imported from the United States. The next sunset review will be in 2022.

U.S. stakeholders have expressed serious concerns about South Africa’s imposition of antidumping duties on imports of frozen bone-in chicken from the United States, including concerns about methodology, transparency, and due process spanning the original investigation and final determination in 2000 to the initiation of subsequent sunset reviews. As a result of industry negotiations to address and resolve these issues, in June 2015, U.S. and South Africa poultry industry groups reached a framework agreement to establish a tariff-rate quota (TRQ) on a certain volume of U.S. frozen bone-in chicken that could be exported to South Africa without being subject to antidumping duties. In December 2015, ITAC published final guidelines for administering the TRQ. Upon publication of the final guidelines, the TRQ entered into force, allowing U.S. exports of frozen bone-in chicken to begin. In February 2016, shipments of U.S. frozen bone-in chicken to South Africa officially commenced.

Throughout the initial three years of the TRQ’s implementation, U.S. exporters and South African importers expressed concerns with a number of aspects of the system, including with the guidelines, the administrative efficacy, and the improper transfer of quota allocations. In July 2018, ITAC and the Department of Agriculture, Forestry and Fisheries (DAFF) announced their intention to review the guidelines. ITAC and DAFF consulted stakeholders over the following months, including U.S. government officials and private sector representatives and, in November 2018, circulated a draft of the amended guidelines. ITAC declared that the amended guidelines address the two primary challenges raised by stakeholders: 1) the proliferation in the number of applicants and 2) non-compliance with the TRQ guidelines. ITAC convened stakeholder meetings, and interested parties had until December 21, 2018 to submit comments. The U.S. Government submitted comments on January 4, 2019, after receiving an extension from ITAC. The amended guidelines were finalized on February 1, 2019; however, they did not take into account U.S. Government comments. The amended guidelines will govern the 2019/2020 quota year commencing on April 1, 2019.

Taxes

In December 2017, the South African parliament passed the Rates and Monetary Amounts and Amendment of Revenue Laws Act, which contains the Ministry of Finance imposed tax on sugar-sweetened beverages. The tax, which became effective in April 2018, applies to both imported and domestically-manufactured beverages. It is meant to discourage the consumption of sugar-sweetened beverages to deal with obesity and the epidemic of non-communicable diseases such as diabetes, which is cited as the second leading cause of death, after tuberculosis, among South Africans. One-hundred percent fruit and vegetable juices, and milk products with no added sugar will be exempt from the tax.

Furthermore, in February 2019, the South African Minister of Finance announced a 5 percent increase in the tax (from 2.1 cents to 2.21 cents per gram of sugar content that exceeds 4 grams per 100ml -- the first 4 grams per 100ml still remains levy free).

Nontariff Barriers

Import Bans and Import Restrictions

The South African Department of Trade and Industry prohibits imports of goods of a specified class or kind into South Africa by notice in the Government Gazette, unless the products are imported in accordance with a permit issued by ITAC. Prohibited imports include narcotic and habit-forming drugs in any form; fully automatic, military and unnumbered weapons, explosives and fireworks; poison and other toxic substances; cigarettes with a mass of more than two kilograms per 1,000; goods to which a trade description or trademark is applied in contravention of South African law (for example, counterfeit goods); unlawful reproductions of any works subject to copyright; and prison-made or penitentiary-made goods. ITAC requires import permits on used goods if such goods are also manufactured domestically, thus significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

Customs Procedures and Trade Facilitation

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017, and has availed itself of the developing member flexibilities in Section II of the TFA. South Africa notified three of the four transparency provisions in TFA Section I as Category A. South Africa has not yet submitted the relevant information, which was due to the WTO Secretariat at entry into force of the Agreement, February 22, 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Food and Beverages

In September 2016, the Department of Trade and Industry published the Final National Liquor Policy (no. 1208), which provides policy recommendations intended to amend the Liquor Act, 59 of 2003. Some stakeholders have expressed concerns related to the proposed prohibition on the sale of "very high alcohol content" products and the "strict" labeling of liquor beverage products, as these terms are undefined in the policy document. No amendments to the Liquor Act had been introduced as of March 2019.

In December 2017, the Department of Health issued amendments to its regulations relating to health measures on alcoholic beverages (Amendment Regulations Relating to Health Messages on Container Labels of Alcoholic Beverages (R1458)). The regulations, which will enter into force December 22, 2020, require that the health warnings printed on the labels of alcoholic beverages be increased in size to one-eighth of the total container size, as opposed to one-eighth of the label. Some stakeholders have expressed concerns about the proposal, including the lack of a definition of the word "container," which could be interpreted to include not just the consumer-facing packaging, but also any other packaging materials used to contain or transport the beverages. In addition, stakeholders are seeking clarity about enforcement of the proposed rotation requirement, which would require that the seven health warnings be exhibited on the labels with equal regularity to one another within a 36-month period. The Department convened a stakeholder meeting in July 2018 and assured South African alcoholic beverage industry representatives of its commitment to accept comments, re-consider the regulations, and proceed using a transparent process.

Certification

In March 2016, the Independent Communications Authority of South Africa (ICASA) and the South African Bureau of Standards (the SABS) signed a Memorandum of Understanding (MOU) with the intent to jointly revise the approach for issuing Certificates of Compliance (CoCs) for Electromagnetic Interference/Compatibility (EMI/EMC) of electrical and electronic goods. CoCs certify that the limits of radiated and electromagnetic disturbances emanating from electrical and electronic equipment comply with regulated standards. This was predicated by what SABS called "the influx of low quality products into the country and the risks they pose to consumers." In June 2017, the SABS implemented the new program for the issuance of EMC CoCs, including an annual non-refundable fee paid by manufacturers for each CoC, fees for registering factories, and fees for model name changes. Furthermore, the program requires manufacturers to have EMI/EMC testing done at SABS verified third-party labs. If testing is required from an independent lab that is not SABS verified, the manufacturer must request that the lab be verified through SABS at the expense of the lab. Ultimately, the new regulation is meant to ensure that all electronic equipment entering South Africa meets the required quality-performance standards. However, some industry stakeholders have raised concerns that the five-fold increase in certification costs, the additional administrative burden, and the lack of resources in South Africa to support the new procedure, will extend time to market for quickly evolving (and obsolescing) ICT products.

Sanitary and Phytosanitary Barriers

Certification and Sealing of Containers for U.S. Meat and Poultry Exports

At the conclusion of health certificate negotiations on poultry, pork, and beef in March 2016, DAFF agreed that a U.S. Department of Agriculture (USDA) veterinarian would sign the export health certificate, and accepted that the exporter would sign the seal on the container. However, DAFF later demanded that a USDA veterinarian sign both the health certificate and the container seals for shipments of U.S. pork casings and egg products. U.S. experts have provided numerous, extensive explanations regarding U.S. export processes, which make it impossible for USDA veterinarians to be present at each port to sign each container seal. The United States continues to urge DAFF to accept the 2016 agreed-upon certification procedures.

Pork

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes stringent trichinae-related freezing requirements for imported pork and pork products. The United States does not consider such requirements to be necessary for U.S. pork products. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to concerns related to Porcine Reproductive and Respiratory Syndrome (PRRS). This restriction does not appear to be consistent with international standards.

In January 2016, the U.S. Government and DAFF reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. This allowed a resumption of trade in certain pork products for which the certificate may be used. In December 2017, DAFF began allowing the importation of five additional pork cuts from the United States. However, certain cuts remain ineligible. Discussions to expand the list of U.S. pork cuts and products that may be sold without being further processed in South Africa are ongoing.

Poultry

In December 2014, South Africa banned all poultry imports from the entire United States due to the detection of highly pathogenic avian influenza (HPAI) in backyard flocks in Washington and Oregon. In November 2015, the United States and South Africa agreed to an animal health protocol to allow trade in U.S. poultry from states not affected by HPAI.

In January 2016, the U.S. Government and DAFF reached agreement on a USDA export health certificate for the importation of U.S. poultry into South Africa. At the same time, the U.S. Government and DAFF agreed to specific procedures with respect to salmonella testing to be applied to imports of U.S. poultry. This permitted the resumption of U.S. poultry imports into South Africa.

Despite this significant progress, U.S. exporters and South African importers continue to experience certain challenges and inconsistencies related to South Africa's salmonella testing methodology. The United States continues to urge DAFF to employ transparent and consistent practices in testing imported poultry products and to utilize a risk-based approach to sampling frequency. In October 2018, the United States sent a letter to DAFF reiterating these points and requesting additional information on the sampling plan, and as of March 2019, had not received a response.

Horticultural Products

South Africa prohibits imports of apples from the Pacific Northwest, except for apples originating from orchards that have been declared free from *Rhagoletis pomonella* (apple maggot). The United States is currently seeking access for apples that originate from areas protected against apple maggot and that undergo a cold treatment protocol. The United States has invited DAFF to schedule a trip to the state of Washington to view production. Additionally, in 2014, the United States requested market access for blueberries. USDA is in the process of negotiating pest-risk mitigation measures for blueberries with DAFF.

GOVERNMENT PROCUREMENT

The 2011 Local Procurement Accord (the Accord) signed between the South African government and business, labor, and community stakeholders commits the government to significantly expand the value of goods and services it procures from South Africa suppliers. The Accord included an "aspirational target" of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa's National Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on all government and parastatal purchases or lease contracts for goods, equipment, or services, with an imported content greater than or equal to $10 million. This obligation requires the seller or supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the goods or services purchased or leased pursuant to a government tender.

South Africa also uses government procurement to empower historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. A company's B-BBEE scorecard accounts for a percentage of a bid's assessment, which varies by sector. (See the Investment Barriers section below for more information on B-BBEE.)

South Africa is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The South African government has taken some positive steps toward more effective protection and enforcement of IPR, including by appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

The Department of Trade and Industry (DTI) introduced an updated draft of the Copyright Amendment Bill that contains some needed modernization of the copyright law, but also contains provisions that some stakeholders argue will weaken the adequacy and effectiveness of the protection of copyright and related rights in South Africa. Specific concerns include broad and ambiguous exceptions to copyright, new limitations on contractual relations between private parties, and technological protection measures that stakeholders argue may not meet international standards. The DTI also finalized the Intellectual Property Policy of the Republic of South Africa Phase I (IP Policy), which lays the groundwork for future legislation and regulations governing IP in South Africa. Stakeholders have raised concerns that the IP Policy advocates for weaker exclusive patent rights, among other things.

Under the European Union-South African Development Community Economic Partnership Agreement, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merit.

SERVICES BARRIERS

Audiovisual Services

The Independent Communications Authority of South Africa (ICASA) imposes local content requirements for satellite, terrestrial, and cable subscription services. In March 2016, ICASA updated local content regulations that require up to 80 percent of broadcast programming to consist of South African programming. Foreign ownership in a broadcaster remains capped at a maximum of 20 percent.

In 2006, South Africa agreed to meet an International Telecommunications Union deadline to achieve analog-to-digital migration by June 1, 2015. As of November 2018, South Africa has initiated but not completed the migration. This has prevented the spectrum from being allocated to the telecommunications operators who have requested access to the 2.6 GHz band and frequencies below 850 MHz to build next generation mobile broadband networks.

Telecommunications Services

Telkom, a partly state-owned communications company, dominates fixed-line telecommunications services in South Africa. Telkom effectively operates as a monopoly in the fixed-line broadband market, despite the introduction of a second national operator in 2006. The South African government remains the largest shareholder in Telkom with a 39.3 percent direct stake and an additional 12 percent share through the state-owned Public Investment Corporation.

In October 2016, the South African Department of Telecommunications and Postal Services (DTPS) published a National Integrated Information and Communication Technologies (ICT) policy white paper that recommended a number of policies that could have led to a fundamental restructuring of the telecommunications market. The white paper proposed opening access to both telecommunications infrastructure and high-demand spectrum, as well as the creation of a single national wireless open access network for high-demand spectrum run by a public-private partnership. However, the legislation to implement these policies is stalled in Parliament as the main opposition party contends key provisions are unconstitutional.

INVESTMENT BARRIERS

While South Africa is generally open to greenfield foreign direct investment (FDI), merger and acquisition-related FDI is scrutinized closely for its impact on jobs and local industry. Private sector and other stakeholders are concerned about politicization of South Africa’s posture towards this type of investment. South Africa also imposes local content requirements on investments in certain sectors such as renewable energy projects.

The Broad-Based Black Economic Empowerment Act of 2013 (B-BBEE), and associated codes of good practice, requires levels of company ownership and participation by Black South Africans to get bidding preferences on government tenders and contracts. The B-BBEE Codes of Good Practice creates a certification system (a “B-BBEE scorecard”) that rates a company’s commitment to the empowerment of historically disadvantaged people in South Africa. A strong rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid’s assessment, but is also important for branding purposes and for managing client relationships, as a company’s score can influence a client’s own B-BBEE score. The government has made B-BBEE requirements stricter in recent years, causing concern among U.S. firms wary about the impact of the changes to their ratings. U.S. firms have particularly struggled to score well on the “ownership” element of the scorecard, as a result of corporate rules that can prevent the transfer of discounted equity stakes to South African subsidiaries. Whereas U.S. firms had at one time been able to compensate with scores on other elements, recent changes to the rules introduced penalties for failing to comply with requirements relating to ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with “Empowering Suppliers,” which proves challenging to companies importing products or inputs for value chains. Although the government recently created a program called Equity Equivalence (EE) for international companies that cannot meet the ownership element of B-BBEE through the direct sale of equity to local investors, some companies have reported that the reporting requirements and high level of required financial contributions make the EE program unviable for most.

Sectors such as financial services, mining, and petroleum have their own “transformation charters” intended to promote accelerated empowerment within those sectors. The charters for the integrated transport, forest products, construction, tourism, and chartered accountancy sectors have force of law in South Africa. Many other sectors, including financial services, information and communications technology, and property, have transformation charters that do not have force of law, yet express the sector’s commitment to “economic transformation.”

South Africa Mining Charter

On September 27, 2018, the Minister of the Department of Mineral Resources announced the Mining Charter 2018, stating that the new charter will be operationalized within the next five years to bolster certainty in the sector. The charter establishes requirements for new licenses and investment in the mining sector and includes rules and targets for black ownership and community development in the sector as a means to redress historic economic inequalities from the apartheid era. The new rules recognize existing mining right holders who have a minimum 26 percent B-BBEE ownership as compliant, but requires an increase to 30 percent B-BBEE ownership within a five-year transitional period. Recognition of B-BBEE ownership compliance is not transferable to a new owner. New mining right licenses must have 30 percent B-BBEE shareholding, applicable to the duration of the mining right.

Other Investment Restrictions

The Protection of Investment Act of 2015 contains language that appears vague with respect to measures the government of South Africa may take against an investor or its investment, including "redressing historical, social and economic inequalities and injustices"; "promoting and preserving cultural heritage and practices, indigenous knowledge and biological resources related thereto, or national heritage"; and "achieving the progressive realization of socio-economic rights." The Act also allows for international arbitration of disputes only after domestic remedies have been exhausted.

In May 2016, South Africa's parliament passed an Expropriation Bill, which provides that the government can expropriate property for a "public purpose" or in the "public interest" in return for compensation deemed to be "just and equitable." In February 2018, the parliament passed a motion to open debate on whether or not to amend the constitution to permit expropriation of property without compensation. Subsequently, the Ministry of Public Works released the Expropriation Bill for public comments, and the ministry is currently reviewing public comments.

OTHER BARRIERS

Bribery and Corruption

Several laws have been enacted in the last 15 years to increase transparency and reduce corruption in South Africa's government, but some of those laws suffer from deficiencies. For example, legislation barring the payment of bribes to public officials fails to protect whistleblowers against recrimination or defamation claims, while the Protection of State Information Bill, passed by the parliament in 2013, has been criticized by academics, civil society groups, international organizations, and the media as limiting transparency and freedom of expression. The Protection of State Information Bill has yet to be signed into law.

Implementation of transparency and anticorruption laws also suffers from challenges. Although South Africa has no fewer than 10 agencies engaged in anticorruption activities, high rates of violent crime strain overall law enforcement capacity and make it difficult for South African criminal and judicial agencies to dedicate adequate resources to anticorruption efforts.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $2.3 billion in 2018, a 8.6 percent decrease ($217 million) over 2017. U.S. goods exports to Sri Lanka were $372 million, up 10.7 percent ($36 million) from the previous year. Corresponding U.S. imports from Sri Lanka were $2.7 billion, down 6.4 percent. Sri Lanka was the United States' 108th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Sri Lanka (stock) was $168 million in 2017 (latest data available), a 7.7 percent increase from 2016.

TRADE AGREEMENTS

Sri Lanka has signed free trade agreements (FTAs) with India, Pakistan, and Singapore, and is negotiating an FTA with China.

The FTAs with India and Pakistan cover only trade in goods. The agreements provide for duty-free entry as well as duty preferences for manufactured and agricultural goods. Domestic value addition of 35 percent is required to qualify for concessions granted under the agreements.

The Singapore-Sri Lanka FTA came into force on May 1, 2018, and covers: investment, goods, services, trade facilitation, government procurement, telecommunications, electronic commerce, and dispute settlement. Sri Lanka has eliminated customs duties on 50 percent of tariff lines (including tariff lines already with zero percent duty), which will progressively increase to 80 percent over 14 years. Sri Lanka will not reduce or eliminate duties on the remaining 20 percent of tariff lines.

Sri Lanka is a member of the South Asian Free Trade Area and the Asia-Pacific Trade Agreement .

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Sri Lanka's Most Favored Nation (MFN) applied tariff rate for agricultural products averaged 26.9 percent, and its MFN applied tariff for non-agricultural goods averaged 6.3 percent in 2017. However, Sri Lanka's simple average World Trade Organization (WTO) bound tariff rates are generally much higher, and most products do not have their rates bound, which has given Sri Lanka flexibility to increase the rates.

Sri Lanka's main trade policy instrument has been import tariffs. In November 2017, Sri Lanka Customs adopted the WTO's new Harmonized Commodity Description and Coding System in its tariff schedule. There are currently three import tariff bands: zero percent, 15 percent, and 30 percent. Generally, raw materials are at zero percent, intermediate goods are at 15 percent, and finished goods are at 30 percent. Additionally, some items, such as various agricultural products, are subject to an *ad valorem* or specific tariff, whichever is higher. In addition to the import tariff, a number of supplementary taxes and levies on imports, taken together with tariffs, can total 100 percent or more of the value of some food and consumer goods, making them prohibitively expensive to import and sell. The 2017 and 2018 government budgets removed certain supplementary taxes on several items. However, supplementary taxes continue on a wide range of items, sharply raising their prices.

Taxes

The Export Development Board (EDB) levy, often referred to as a "cess", ranges from 10 percent to 35 percent *ad valorem* on a range of imports identified as "nonessential" or as competing with local industries. Further, when calculating the EDB levy, an imputed profit margin of 10 percent is added to the import price. With some products, such as biscuits, chocolates, and soap, the levy is charged not on the import price, but instead on 65 percent of the maximum retail price. In an attempt to rationalize the tariff structure, the 2017 and 2018 government budgets removed the EDB levy on 350 items.

A Ports and Airports Development Levy (PAL) is also applied on most imports. The government increased the PAL from 5 percent to 7.5 percent starting January 1, 2016. Locally manufactured products are not subject to the PAL. The 2018 government budget removed the PAL on 1,000 items.

Additionally, the Sri Lankan government imposes a value-added tax (VAT) on imports, and increased the rate from 11 percent to 15 percent starting November 1, 2016. When calculating the VAT, an imputed profit margin of 10 percent is added to the import price. Locally manufactured products are also subject to VAT, but not the imputed profit margin.

A special commodity levy (SCL) is charged on some imported food items. The SCL rates on basic food items are changed frequently, creating uncertainty for importers. Locally manufactured products are not subject to SCL. Items subject to SCL typically include sugar, canned fish, chickpeas, potatoes, onions, vegetable oil, and margarine. Apples, grapes, oranges, dairy spreads, butter, and yogurt are also subject to SCL.

Textiles are subject to an EDB levy of Rs. 100 per kg (approximately $0.57). In addition, starting September 17, 2018, textiles are subject to a 5 percent VAT. Sri Lanka does not have import duties on textiles. Nations Building Tax (NBT) and PAL are not applicable on textiles.

Apparel is subject to a VAT of 15 percent or an EDB levy of 15 percent or Rs. 200 ($1.14) per unit, whichever is higher, and an NBT of 2 percent. Sri Lanka does not have import duties on articles of apparel and clothing accessories. The PAL is not applicable on these items.

In October 2014, the Sri Lankan government introduced an all-inclusive tax on cars under the Excise Special Provisions Law, replacing the VAT, the NBT, the EDB levy, the import tariff, and the PAL. The tax is based on engine capacity. The excise tax on cars ranges from Rs. 1,750 per cubic meter (CM) for small cars (approximately $10) to Rs. 11,000 per CM (approximately $62.80) for large vehicles. Electric cars are taxed at lower rates.

Nontariff Barriers

Import Restrictions

In October 2018, in response to a fast depreciating rupee, the government introduced a raft of policy measures including margin deposit requirements for letters of credit opened for the importation of personal motor vehicles and selected non-essential consumer goods imports and the suspension of concessionary vehicle permits for politicians and government servants. These measures are expected to ease the excessive demand for foreign currency.

In 2018, Sri Lanka enacted a new antidumping and countervailing duties law and a safeguard measures law to provide protection to domestic industries from injurious dumping and subsidization, and for the application of safeguard measures where import surges cause or threaten to cause injury to the domestic industry. The laws are not enforced yet as the government has not published implementing regulations.

Import Licensing

Sri Lanka requires import licenses for more than 400 items at the six-digit level of the Harmonized Tariff Schedule, mostly for health, environment, and national security reasons. Importers must pay a fee to receive an import license. Import licenses for meat products may be required based on the health or disease status of livestock in the particular country or area.

Approval is at the discretion of the regulators; no standard practices are followed and requirements can vary. Regulators entrusted with evaluating products to be imported often lack the capacity to make scientific determinations, and a zero risk policy is followed in lieu of scientific rationale. Import of telecommunication equipment requires approval from the Telecommunications Regulatory Authority and a license issued by the import controller.

Tea

The Sri Lanka Tea Board regulates tea imports into Sri Lanka. Tea imports require a license, only bulk tea can be imported, and only registered tea exporters are allowed to import tea for value addition and re-export. Only certain varieties of tea can be imported for such purposes. When re-exporting, the packages should indicate: "Ceylon Tea blended with other origin teas."

Customs Barriers and Trade Facilitation

Duties are calculated using the actual transaction value of the goods (as evidenced by the commercial invoice or other contract of sale document). If the value of the goods cannot be established by this method, Sri Lanka Customs will attempt to establish the value of the goods using methods in line with the WTO Customs Valuation Agreement (CVA). When the customs authority does not accept the declared value and determines the value in accordance to the CVA, the importer has a right to appeal the decision to the Director General of Customs. The Customs Ordinance allows an importer to clear the imported goods provisionally from Customs custody pending a final determination on value. However, this option is not available to an importer where fraud is suspected. U.S. companies have expressed concern that the Sri Lanka Customs valuation system is susceptible to misuse and is not consistently applied.

In addition, Section 153(2)(b) of the Customs Ordinance authorizes customs officers to receive 50 percent of the monetary penalty imposed for various customs infractions. The money received from the sale of forfeited goods is credited to the Customs Officers Reward Fund. Several U.S. companies have reported that the existence of this scheme has created incentives for customs officers to take unwarranted actions.

On May 31, 2016, Sri Lanka ratified the WTO Trade Facilitation Agreement and availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Sri Lanka one of four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

The government has taken steps to improve trade facilitation in line with the WTO Trade Facilitation Agreement. A National Trade Facilitation Committee (NTFC) was established in 2016. Sri Lanka launched an online trade information portal in July 2018. However, not all trade related information is available on the portal.

Other Market Access Barriers

Price Controls

Sri Lanka's Consumer Affairs Authority (CAA) sets maximum retail prices (MRP) for essential consumer items. Items subject to MRP include lentils, chick peas, wheat flour, dried chili peppers, canned fish, milk powder, sugar, imported basic variety of rice, imported onions, and imported potatoes. Food importers have lobbied the government to remove MRP, arguing that standard prices are impractical in an environment of changing international markets and currency fluctuations. In 2018, the CAA introduced price controls on bottled water. The bottled water industry has over 120 suppliers in the market, and policy advocates have urged the government to reverse the decision to intervene in an already competitive market.

Pharmaceuticals

U.S. stakeholders have expressed concern about operational difficulties created by the lack of a proper quality assurance mechanism, as well as a lack of transparency and inconsistent implementation of price controls on pharmaceuticals and medical devices. In October 2016, the National Medicine Regulatory Authority (NMRA), under the Ministry of Health, instituted MRP for 48 essential drugs. The government also introduced price controls on Intra-ocular lenses in February 2017 and on stents in August 2017. In August 2018, the NMRA introduced price controls on an additional 15 drugs. U.S. stakeholders report that these price controls were put in place with little notice and without sufficient opportunity for public comment. Additionally, the government has not taken action to increase MRP of drugs to compensate for rupee depreciation, although Sri Lanka imports about 85 percent of its pharmaceuticals. In light of these pricing policies, U.S. stakeholders report that they are considering delaying entry or withdrawing important products from the Sri Lankan market. The United States also raises concerns over Sri Lankan government policies to promote local manufacture of pharmaceuticals through buy-back guarantees.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Soft Drinks

Sri Lanka issued the Food (Color Coding for Sugar levels) Regulations 2016, which requires labeling of carbonated beverages, ready-to-serve drinks other than milk-based products, and fruit juices. In November 2017, the government imposed an excise duty of Rs 12 per liter or Rs 0.50 per gram of sugar (approximately $2.85 per kilo of sugar) contained in beverages, whichever is higher, in support of the government's anti-diabetes campaign. Both the labeling regulations and excise taxes were introduced with limited input from the beverage industry and with little time for industry to respond and implement changes. The labeling regulation and tax affects the sales of both U.S. companies and domestic producers.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Sri Lanka requires the approval of its Chief Food Authority for the importation or the sale of products derived from genetic engineering (GE) intended for human consumption. However, Sri Lanka does not have a functioning approval mechanism for GE products and thus, in effect, has a ban on seeds and other agricultural products derived from GE. Sri Lanka requires all agricultural commodity imports to be accompanied by a certification that the commodity is "non-GE." The United States will continue to engage Sri Lanka on these issues, especially on establishing a biotechnology regulatory framework consistent with international standards.

Poultry Products

Sri Lanka permits imports of poultry products only from countries that have never reported outbreaks of Highly Pathogenic Avian Influenza (HPAI) or only after six months have passed since a country has notified the World Organization for Animal Health (OIE) that a particular area or state (in the case of the United States) is free of avian influenza. This is despite the fact that the OIE recommends that areas affected by avian influenza can resume trade three months after the last detection. However, beginning in 2018, Sri Lanka relaxed the regulations for U.S. poultry products to allow imports from areas with a three-month disease-free status, subject to a risk assessment for each consignment.

Meat Products

Sri Lankan animal health authorities take a long time to conduct microbiological tests of meat shipments. Additionally, these authorities occasionally reject imports based on testing methods that are not consistent with those set out in the country's regulations or the import permit. The relevant authorities often only accept testing performed by the Medical Research Institute (MRI) based in Colombo, whose testing methods differ from those set out in Sri Lanka's regulations and is not an accredited laboratory. Any negative results on the sample tests may lead to rejection of the shipment, requiring the importer to re-export the shipment. The extended period taken to conclude testing of the shipment places the importer at risk of losing the right to file insurance claims as many insurers only insure for a limited period.

SUBSIDIES

In 2018, the Sri Lanka Export Development Board announced a market access program for entrepreneurs. The program provides assistance for production process upgrades and market development. Assistance includes matching grants up to Rs 5 million ($28,570). Government-owned Sri Lanka Export Credit Insurance Corporation (SLECIC) provides export credit insurance to exporters and credit guarantees to banks to cover their risks. SLECIC does not involve direct financing of exporters.

In the agriculture sector, subsidies are provided for tea and rubber replanting and factory modernization. Sri Lanka also provides subsidized fertilizer for agricultural crops. The Finance Ministry has announced interest rate subsidies for small- and medium-size entrepreneurs, including exporters under the "Enterprise Sri Lanka" economic development program.

GOVERNMENT PROCUREMENT

Government procurement of most goods and services in Sri Lanka is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement has also occurred outside the normal competitive tender process. There are widespread concerns about the lack of transparency and accountability in the tender process. Tender specifications are often developed to suit a particular company. Even on occasions when a U.S. company wins a tender, the contract can be canceled on a technicality, often at the urging of a competitor. The practice of accepting unsolicited proposals without competing bids continues and there is a lack of clarity in the government procurement process, which leads to reports of large-scale corruption.

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement (GPA) but has been an observer to the WTO Committee on Government Procurement since April 2003.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Enforcement of intellectual property rights (IPR) has gradually improved in Sri Lanka, but counterfeit goods, particularly imports, continue to be widely available, and music and software piracy are reportedly widespread. Foreign and U.S. companies in the recording, software, movie, clothing, and consumer product industries complain that inadequate IPR protection and enforcement weaken their businesses in Sri Lanka. The government of Sri Lanka published a policy in 2010 requiring all government ministries and departments to use only licensed software, but it has yet to put systems in place to monitor compliance with this policy. Some industry sectors, including apparel, software, tobacco, and electronics, have reported success in combating trademark counterfeiting through the courts. However, redress through the courts remains time-consuming and challenging overall. Better coordination among enforcement authorities and government institutions, such as the National Intellectual Property Office (NIPO), Sri Lanka Customs, and Sri Lanka Police is needed to strengthen Sri Lanka's IPR regime. Along with coordinated enforcement, additional trained staff and resources are needed at the NIPO.

SERVICES BARRIERS

Distribution Services and Express Delivery

Sri Lanka does not provide *de minimis* treatment for the application of taxes on inbound shipments. Further, airport authorities do not provide preferential treatment to express cargo airlines. Rather, express shipments must undergo the routine examination procedure by security and the airport's authority, which delays clearance.

Financial Services

At present, all foreign banks in Sri Lanka operate as branches. All banks operating in Sri Lanka, including foreign banks, are required to establish two branches outside the Western Province for each new branch established in the Western Province. The Central Bank also requires all banks operating in Sri Lanka to direct a minimum 10 percent of lending for agriculture.

A 2.5 percent stamp duty applies to usage of credit cards issued by Sri Lankan banks for transactions entered into in foreign currency. Transactions in local currency are exempted from this duty. As a result, U.S. electronic commerce firms, setting prices in dollars, face greater costs than local competitors when selling in the Sri Lankan market.

Insurance Services

Only companies incorporated in Sri Lanka may be registered as an insurer. Foreign insurance companies that provide health insurance services to Sri Lankans must sell through an insurance broker registered in Sri Lanka and are restricted to insurance products not sold by local insurance companies. The Sri Lankan government requires all general insurance companies to cede 20 percent of their reinsurance coverage to a state-run insurance fund.

Audiovisual Services

In 1999, Sri Lanka imposed restrictions on the number of foreign films that can be imported into the country and required all of the films to be imported by the State Owned National Film Corporation. In 2002, Sri Lanka changed the rules and created five different entities – "circuits" – that can import foreign films, four private and one state-run, but kept the quota limits. Current restrictions limit the number of imported English language films to 65 per year (13 per entity). In 2018, Sri Lankan importers came close to the 65 film total limit and resorted to "shopping around" different circuits for quota slots. The overall process for importing foreign films remains opaque. In addition, the Ministry of Culture does not allow foreign language films to be subtitled in Sinhala or Tamil, restricting the market appeal of English-language films to non-English-speakers.

Sri Lanka also imposes taxes on foreign films, programs, and commercials shown on television. In 2017, the government increased the tax on foreign films and television series dubbed into Sinhala and Tamil from Rs 90,000 per 30-minute episode (approximately $515) to Rs 150,000 (approximately $857) per 30-minute episode. Foreign television shows in their original form (without dubbing) are taxed at Rs 100,000 (approximately $571) per 30-minute episode. Foreign films in their original form are taxed at Rs 200,000 (approximately $1,142). Higher rates apply to repeat telecasts. Foreign commercials are taxed at Rs 500,000 (approximately $2,857) in the first 6 months and at Rs 1,000,000 (approximately $5,714) during the next six months. Government approval is required for all foreign films and programs shown on television.

INVESTMENT BARRIERS

Sri Lanka maintains foreign investment restrictions in a wide range of sectors. For example, foreign investment is not permitted in certain types of money lending activities or in the coastal fishing sector. In other sectors, foreign investment is subject to case-by-case screening and approval when foreign equity exceeds 40 percent. These sectors include shipping, travel agencies, freight forwarding, mass communications, deep-sea fishing, timber industries, mining, and the cultivation and primary processing of certain agriculture commodities. Foreign equity restrictions also apply in the gem mining sector. The 2018 government budget proposed to lift restrictions on foreign ownership in shipping and freight forwarding sectors, but the government has yet to announce when it will implement this reform.

As a general matter, Sri Lanka prohibits the sale of public and private land to foreign nationals and to enterprises with foreign equity exceeding 50 percent. However, on July 30, 2018, Sri Lanka amended the Land (Restriction of Alienation) Act of 2014 allowing foreign companies listed on the Colombo Stock Exchange (CSE) to acquire and hold free hold land. The amendment also removed a prohibition on foreign nationals owning condominium property below the fourth floor. The amendments came into effect retrospectively from April 1, 2018. Foreign companies not listed on the CSE and engaged in banking, financial, insurance, maritime, aviation, advanced technology, or infrastructure development projects identified and approved as strategic development projects may be exempted from restrictions imposed by the Land Act of 2014 on a case-by-case basis.

In 2011 the Sri Lankan government approved the Revival of Underperforming Enterprises and Underutilized Assets Act, which allows for the nationalization of assets belonging to 37 private companies deemed by the Sri Lankan government to be underperforming and not meeting lease conditions. Although many of the companies were defunct, several were operating businesses, including one that was owned by a prominent member of the opposition. The Act has significantly increased investor uncertainty regarding property rights in Sri Lanka. The 2018 government budget proposed repealing the Act.

ANTICOMPETITIVE PRACTICES

State Owned Enterprises (SOEs) are active in transport (bus and railways, ports and airport management, airline operations); utilities such as electricity; petroleum imports and refining; water supply; retail; banking; telecommunications; television and radio broadcasting; newspaper publishing; and insurance.

In total, there are 400 SOEs, of which 55 have been identified by the Sri Lanka Treasury as strategically important SOEs and 345 have been identified as non-commercial SOEs. SOEs employ over 240,000 people. SOEs make purchases from private companies and foreign firms and have easy access to credit from state-owned banks and to government-owned land. SOEs do not engage in research and development. In 2017, the government of Sri Lanka channeled $228 million in transfers from the national budget to support SOEs. The government of Sri Lanka is in the process of selling off non-strategic SOEs, including the government's stake in the Hilton Colombo Hotel and another hotel under construction. Several attempts to sell the government's stake in the national carrier, Sri Lankan Airlines, have not been successful.

OTHER BARRIERS

Bribery and Corruption

Public sector corruption, including bribery of public officials, is a significant challenge for U.S. firms operating in Sri Lanka and a constraint on foreign investment. While the country has generally adequate laws and regulations to combat corruption, enforcement is weak and inconsistent. U.S. stakeholders have expressed particular concern about corruption in large projects and in government procurement.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade deficit with Switzerland was $18.9 billion in 2018, a 32.1 percent increase ($4.6 billion) over 2017. U.S. goods exports to Switzerland were $22.2 billion, up 2.5 percent ($546 million) from the previous year. Corresponding U.S. imports from Switzerland were $41.1 billion, up 14.3 percent. Switzerland was the United States' 18th largest goods export market in 2018.

U.S. exports of services to Switzerland were an estimated $37.3 billion in 2017 (latest data available) and U.S. imports were $26.9 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $74.9 billion in 2016 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $47.5 billion.

U.S. foreign direct investment (FDI) in Switzerland (stock) was $250.0 billion in 2017 (latest data available), a 33.6 percent increase from 2016. U.S. direct investment in Switzerland is led by manufacturing, nonbank holding companies, and finance/insurance.

TRADE AGREEMENTS

Switzerland, along with Iceland, Liechtenstein, and Norway, is a member of the European Free Trade Association (EFTA). However, unlike the other EFTA members, Switzerland has a series of bilateral agreements with the European Union (EU) and does not participate in the EU single market through the European Economic Area (EEA) accord.

IMPORT POLICIES

Tariffs

Switzerland’s Most Favored Nation (MFN) applied tariff averages 35.2 percent for agricultural goods and 1.8 percent for non-agricultural goods.

Agriculture

U.S. agricultural market access to the Swiss market is restricted by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs all supporting domestic production. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

Swiss trade groups and certification associations also impose some barriers to agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains over 25 times higher than the fee for domestic bulls.

SANITARY AND PHYTOSANITARY BARRIERS

Switzerland generally aligns its sanitary and phytosanitary (SPS) measures with those of the European Union.

Switzerland did not notify any SPS measures to the WTO in 2018, despite an obligation to notify proposed SPS measures to the WTO and to take comments into consideration prior to finalizing its SPS measures.

Agricultural Biotechnology

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on planting biotechnology crops and marketing agricultural biotechnology animals. The moratorium is presently scheduled to remain in force through the end of 2021.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA), which covers both federal and cantonal procurement. Because Switzerland has not yet adopted the revised GPA that entered into force in April 2014, U.S. government procurement access to Switzerland is still governed by the 1994 GPA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Switzerland remained on the Watch List in the 2018 Special 301 Report due to lack of sufficient measures to address online copyright piracy. Although Switzerland generally maintains high standards of intellectual property rights protection and enforcement and makes important contributions to promoting such protection and enforcement internationally, U.S. copyright holders continue to express concerns regarding specific difficulties in Switzerland's system of online copyright protection and enforcement and report that several infringing websites maintain links to Switzerland.

The Swiss government continued to consider draft amendments to its copyright law in 2018. The United States continues to follow closely Swiss government measures to address copyright piracy in an appropriate and effective manner, including through legislation, administrative action, consumer awareness, public education, and voluntary stakeholder initiatives.

SERVICES BARRIERS

Insurance Services

Managers of foreign-owned insurance company branches must reside in Switzerland. Public monopolies provide fire and natural disaster insurance in 19 of 26 cantons and workers compensation insurance within certain industries.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Privacy Shield

Swiss law limits the cross-border transfer of personal data of Swiss citizens to countries Switzerland deems adequate under Swiss law or where certain specific criteria, such as the use of standard contract clauses or binding corporate rules, are met. In January 2017, the U.S. and Swiss governments concluded the Swiss-

U.S. Privacy Shield Framework to provide companies a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. Switzerland has issued a partial adequacy decision for the United States. The decision is limited to the companies that participate in the Privacy Shield Framework. As of November 2018, over 2,600 U.S. companies had self-certified as being compliant with Privacy Shield, and awareness of compliance with Privacy Shield is rising among Swiss firms.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $15.5 billion in 2018, a 7.3 percent decrease ($1.2 billion) over 2017. U.S. goods exports to Taiwan were $30.2 billion, up 17.5 percent ($4.5 billion) from the previous year. Corresponding U.S. imports from Taiwan were $45.8 billion, up 7.8 percent. Taiwan was the United States' 15th largest goods export market in 2018.

U.S. exports of services to Taiwan were an estimated $9.9 billion in 2017 (latest data available) and U.S. imports were $8.1 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $7.4 billion in 2016 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $2.5 billion.

U.S. foreign direct investment (FDI) in Taiwan (stock) was $17.0 billion in 2017 (latest data available), a 6.9 percent increase from 2016. U.S. direct investment in Taiwan is led by manufacturing, wholesale trade, and finance/insurance.

OVERVIEW

The United States-Taiwan Trade and Investment Framework Agreement (TIFA) is the key mechanism for trade dialogue between the United States and Taiwan authorities and covers the broad range of trade and investment issues important to U.S. and Taiwan stakeholders. It is co-led by the Deputy United States Trade Representative and Taiwan’s Deputy Minister of Economic Affairs, and held under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO). The last TIFA meeting was held in October 2016 in Washington, D.C. Since then, there have been subsequent trade and investment related meetings between both sides. Several of the issues discussed below were raised in recent meetings.

IMPORT POLICIES

Tariffs

The Taiwan authorities maintained tariff-rate quotas (TRQs) on a number of products when it became a WTO Member in January 2002, including small passenger vehicles, fish products, and agricultural products. Taiwan subsequently eliminated TRQs for four fish products and eight agricultural products. Nevertheless, many TRQs remain in place, especially in the agriculture area. TRQs still cover 16 agricultural products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSG) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. Currently, Taiwan has recourse to an SSG for 17 agricultural product categories, including poultry meat, certain types of offal, and milk.

U.S. stakeholders continue to request that Taiwan lower or eliminate tariffs on many goods, including large motorcycles, agricultural products, and soda ash.

Rice

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices had exceeded Taiwan's ceiling price. U.S. exporters have raised concerns that Taiwan's ceiling price mechanism, which is not made public, arbitrarily sets prices lower than the levels bid by U.S. exporters, causing the tenders to fail. As a result, Taiwan purchases of U.S. rice have fallen short of the quota in some years, most recently in 2018. Although Taiwan did fill its rice CSQ from 2014 to 2017, Taiwan's CSQ regime remains a concern.

Nontariff Barriers

Customs Barriers and Trade Facilitation

In May 2017, the Ministry of Finance announced changes to Taiwan's *de minimis* threshold, below which import duties are not collected. Those changes affect a wide range of shipments imported into Taiwan. Effective January 2018, the *de minimis* value for each import dropped from NT $3,000 (U.S. $100) to NT $2,000 (U.S. $67). There is an exception in the regulations for commercial samples, for which the *de minimis* level remains NT $3,000 without frequency restrictions. U.S. stakeholders raised concerns about the lack of transparency in formulating these regulations as well as the impact on trade, urging Taiwan authorities to clarify certain language contained in the regulations.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Agricultural Biotechnology Regulations

In December 2015, the Taiwan legislative authorities passed amendments to the School Health Act that banned the use of biotechnology food ingredients and processed food with biotechnology ingredients in school meals. Through the TIFA mechanism, the United States has continued to highlight the lack of scientific basis for this ban and has urged its removal.

In April 2017, the Council of Agriculture (COA) published a draft regulation that would create separate Harmonized System (HS) codes for genetically engineered (GE) soybeans for food and feed uses. The draft regulation was issued for public comment and notified to the WTO in June 2017. The United States submitted written comments in August 2017 raising concerns about the trade impact and burden on importers. In November 2017, Taiwan responded that the measure would not create additional inspection requirements and had nothing to do with any attempt to ban GE soybeans. Taiwan has not indicated a proposed date of adoption or entry into force for this regulation, which would bring the total number of HS codes for soybeans to four (GE food, non-GE food, GE feed, and non-GE feed).

In June 2017, Taiwan's Ministry of Health and Welfare notified a proposed amendment to the Act Governing Food and Safety Sanitation that would require importers and manufacturers of GE products to establish traceability systems for GE products from imports and to keep records for five years. The United States submitted written comments in October 2017, and Taiwan notified the WTO of an updated version of the proposed amendment in January 2018. Although this revised version clarified the definition of genetically modified raw food materials, it did not address U.S. concerns that mandatory traceability requirements will add costs to food manufacturers and importers without providing meaningful information about food safety to Taiwan consumers. Taiwan has not provided a proposed date of adoption or entry into force.

Cosmetics–Labeling and Other Requirements

In September 2016, the Executive Yuan submitted amendments to Taiwan's Statute for Control of Cosmetic Hygiene to the Legislative Yuan. In April 2018, the Legislative Yuan approved the draft amendments, which went into effect in May 2018. The statute was renamed "The Act for Cosmetics Hygiene Safety Administration" (the Cosmetic Act). It includes new requirements regarding product information registration (for product information files, or PIF) and good manufacturing practices (GMP), and toothpaste and mouthwash products were added to products covered.

During trade and investment discussions in September 2018, Taiwan authorities informed the United States that over 20 draft implementing measures would be notified and finalized before May 2019, one year after the Cosmetics Act went into effect. Since then, only a handful of implementing measures have been issued for public comment and even fewer of them have been notified to the WTO Technical Barriers to Trade (TBT) Committee.

U.S. stakeholders are concerned that implementation of the Cosmetics Act would place an onerous burden on the industry by requiring extensive pre-market documentation submissions, specifically in connection with PIF and GMP requirements, which also might contain Confidential Business Information (CBI). U.S. stakeholders are advocating for an appropriate transition period for compliance for medicated cosmetic products not previously covered under the Statute for Control of Cosmetic Hygiene, including toothpaste, breath fresheners, and sunscreen. U.S. stakeholders are also concerned about the proportionality of punishments for advertising method infractions.

Chemical Substances–ECN and NCN Programs

Taiwan's Occupational Safety and Health Act (the OSH Act) and Toxic Chemical Substances Control Act (TCSCA), as amended, mandate that importers and producers of chemical substances register a wide variety of chemical substances that they sell or utilize in production with the Ministry of Labor (MOL) and with the Environmental Protection Agency of Taiwan (EPAT). MOL and EPAT operate two separate registration programs, the Existing Chemical Notification (ECN) program and the New Chemical Notification (NCN) program.

In August 2015, in response to U.S. advocacy through the TIFA technical barriers to trade working group seeking to eliminate the burden of duplicative TCSCA and OSH Act registrations, EPAT announced that it would serve as a consolidated single registration window. This step, along with the establishment of simplified registration rules, reduced regulatory complexity associated with $2.5 billion in U.S. chemical exports to Taiwan. Phase one of the TCSCA registration process concluded in March 2016. In May 2016, EPAT solicited stakeholder comments to improve the operation of the ECN and NCN registration schemes, including the single window, and reported that EPAT will deploy a list of chemicals to be subject to standard registration by the end of 2017. On March 29, 2018, EPAT issued a preannouncement of the draft amendment of NCN and ECN Registration Guidelines, including the list covering 106 types of chemicals. As of early November 2018, the draft is still with EPAT for review.

The United States also has continued to raise concerns with Taiwan regarding the limited duration of CBI protection and has sought greater flexibility in extending the CBI protection term. In the October 2016 TIFA Council meeting, U.S. and Taiwan authorities discussed strengthening CBI protection in the Third Party Representative (TPR) process. Currently, only domestic importers and manufacturers are authorized to appoint a Taiwan-based TPR to submit registration dossiers on their behalf. U.S. stakeholders continue to advocate for adoption of an Only Representative alternative to simplify the administrative process and enhance CBI protection.

Organics Regulations

Taiwan regulations do not allow products labeled as organic to test positive for any residues from chemicals not approved specifically for use in organic production. This policy, which does not take into account unintentional environmental contamination, has impeded U.S. organic exports to Taiwan. Organic products also may be subject to an unnecessary batch-by-batch hold and test process. In addition, Taiwan requires certification from Taiwan's Council of Agriculture (COA) confirming that U.S. Department of Agriculture (USDA)-certified organic products are organic even though Taiwan has recognized the United States as equivalent for organic products. In September 2017, the Executive Yuan submitted proposed legislation to the Legislative Yuan regarding the production, marketing, testing, and labeling of organic products, including imported products. Among other things, the proposed legislation mandates that the organic equivalency that Taiwan grants the United States and other trading partners be retracted unless those trading partners recognize Taiwan as equivalent for organic products within one year. However, as the United States has made clear to Taiwan, the COA performed a thorough review of the USDA National Organic Program (NOP) standards and found the NOP to be equivalent in 2009, and therefore there is no basis for Taiwan to revoke equivalency.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

The Taiwan authorities banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In 2006, Taiwan began allowing imports of U.S. deboned beef derived from animals under 30 months of age. In October 2009, the United States and Taiwan reached an agreement on a protocol to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, in January 2010, Taiwan's Legislative Yuan adopted an amendment to Taiwan's Food Sanitation Act that banned imports of U.S. ground beef, internal organs, eyes, brains, spinal cord and skull meat, as well as imports of all beef and beef products from cattle 30 months of age and older, for at least 10 years following the last confirmed BSE or variant Creutzfeldt-Jakob disease case. This amendment is contrary to Taiwan's obligations under the 2009 beef protocol. Taiwan also announced additional border measures, including a special import licensing scheme, for permitted offal. Additionally, Taiwan imposed stricter border inspection requirements for certain beef offal (such as tongue) that discourage trade in eligible items. In July 2014, Taiwan confirmed market eligibility for U.S. beef lips, ears, backstrap, skirt sinew, and tunic tissue, although barriers such as batch-by-batch inspections continue to discourage trade. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, World Organization for Animal Health (OIE) guidelines, the United States' negligible risk status, and the beef protocol.

Beta-agonists

In September 2012, Taiwan adopted and implemented a maximum residue limit (MRL) for ractopamine in beef muscle cuts consistent with the Codex Alimentarius Commission standard. Taiwan has not implemented an MRL for ractopamine in other beef products (*e.g.*, offal) or pork, despite notifying the WTO in 2007 of its intent to do so. Taiwan authorities state that pressure from the domestic pork industry and consumer groups prevent their establishment of an MRL for pork. Apart from ractopamine, Taiwan has also not established MRLs for other beta-agonist compounds or provided science to support its policy. The United States will continue urging Taiwan to implement the remaining proposed MRLs for ractopamine without delay, and to accept and approve new applications for MRLs for beta-agonists based on science in a timely manner.

MRLs for Agrochemicals

The Taiwan authorities' slow process for establishing MRLs for pesticides, low number of approved MRLs, and zero tolerance policy for pesticides without established MRLs have resulted in U.S. shipments being stopped at ports of entry, dissuaded some trade due to the high risk of rejection, and acted as a *de facto* restriction on U.S. agricultural exports to Taiwan. The United States will continue to work with Taiwan authorities to establish MRLs based on Codex standards or other science-based MRLs.

Greening in Potato Products

In September 2017, Taiwan authorities confirmed that they would not admit shipments of ready-to-cook potato products that exhibit any green coloration, as Taiwan had no acceptable threshold for greening on potato products. This action resulted in unnecessary rejection and detainment of U.S. potato shipments. Green coloration in potatoes is a natural reaction to sunlight, although green coloration can also be a potential indicator of glycoalkaloids. Following U.S. engagement, Taiwan authorities established a tolerance level for glycoalkaloids, effective November 2, 2018, ahead of the proposed implementation date of January 1, 2019, to replace Taiwan's zero tolerance policy for green coloration in potato products.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Intellectual property right holders report both positive developments and ongoing challenges in Taiwan's protection and enforcement of intellectual property rights (IPR). As discussed further in the Pharmaceuticals section below, Taiwan has enacted amendments to the Pharmaceutical Affairs Act to establish an effective mechanism for early resolution of potential patent disputes. At present, however, U.S. right holders remain concerned about whether implementation of this new system would cover all pharmaceutical products. Taiwan has acted to bolster trade secrets protection and enforcement, but more prosecutors and judges with specialized expertise are needed. Furthermore, considerable challenges remain in combatting copyright and related infringement, particularly with respect to online piracy.

Following trade and investment discussions in Taipei in mid-September 2018, the United States and Taiwan agreed to a Digital Anti-Piracy Work Plan. The United States will continue to work to address IPR issues such as enhanced enforcement cooperation, legislative reform of the Copyright Act, and promotion of legitimate education materials.

Leading up to the Work Plan, Taiwan took certain steps in the copyright arena. To combat against infringing websites, the Taiwan Intellectual Property Alliance (TIPA) signed a Memorandum of Cooperation with the Taipei Association of Advertising Agencies (TAAA) in August 2017. Under this arrangement, TIPA provides TAAA with an infringing website list (IWL), and TAAA distributes the list to its members and advises them not to post advertisements on those websites. Taiwan Intellectual Property Office (TIPO) has convened meetings to consider expansion of this initiative to include payment processors.

In December 2018, the Legislative Yuan introduced draft amendments to Article 87.1.8 and Article 93 of the Copyright Act to combat illicit streaming devices. In October 2017, the Executive Yuan approved a different set of draft amendments to the Copyright Act and sent them to the Legislative Yuan for review. While the draft amendments introduced by the Legislative Yuan represented progress in some areas, they also contained troubling provisions with respect to licensing and the role of collective management organizations (CMOs), as well as vague and broad fair use exceptions. Additionally, U.S. stakeholders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms.

SERVICES BARRIERS

Financial Services

Securities Services

In December 2012, Taiwan's Financial Supervisory Commission (FSC) announced that it would provide preferential licensing procedures for foreign trust fund companies that meet FSC's localization standards. In November 2014, the FSC announced new measures to promote long-term investment in the Taiwan market by lowering the ceiling for Taiwan investors' share of an offshore fund from 70 percent to 50 percent and to 40 percent in some cases. The lower ceilings apply if the offshore fund does not meet certain qualifications for the preferential management scheme, such as establishing a local presence, investing an average of NT $4 billion (U.S. $127.5 million) in onshore funds, and recruiting a certain number of Taiwan staff. As of September 2018, seven offshore funds met these criteria and were entitled to preferential treatment until September 2019, subject to annual review.

Telecommunications Services

The combined direct and indirect foreign ownership limit for wireless and wire line telecommunications firms is 60 percent, with a direct investment limit of 49 percent. Separate rules exist for Chunghwa Telecom (CHT), the legacy carrier still partially owned by the Ministry of Transportation and Communications. CHT controls 93 percent of the fixed line telecommunications market in Taiwan. For CHT, the cap on direct and indirect foreign investment was raised to 55 percent in December 2007, with a direct investment limit of 49 percent.

INVESTMENT BARRIERS

The Taiwan authorities prohibit or limit foreign investment in certain sectors, including agricultural production, chemical manufacturing, bus transportation, sewage and water services, and social services such as public education, health, and childcare.

Foreign ownership in power transmission and distribution, piped distribution of natural gas, and high-speed rail is limited to 49 percent of the total shares issued. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

Taiwan's Ministry of Economic Affairs has proposed amendments to the Statute for Investment by Foreign Nationals to bolster inbound investment, including by eliminating pre-investment approval requirements for investments under U.S. $1 million. As of the end of 2018, the proposed amendments were still awaiting finalization by the Executive Yuan before they could be forwarded for eventual consideration by the Legislative Yuan.

Regulatory and legislative scrutiny of select investments contribute to ongoing concerns about the predictability of Taiwan's investment approval procedures. It also gives rise to questions about the Taiwan authorities' openness to foreign investment in areas deemed sensitive, such as the media industry and transactions involving private equity. Approval of foreign investment involving private equity investors in these sectors can be subject to lengthy review periods, redundant requests for information from the authorities, and intervention from elected officials outside of normal regulatory channels.

The United States has repeatedly raised the need for transparency and consistency in Taiwan's investment review process. The two sides have re-established the Investment Working Group under the TIFA.

OTHER BARRIERS

Pharmaceuticals

U.S. industry stakeholders continue to underscore the need for greater transparency and predictability in Taiwan's pricing and reimbursement policies for pharmaceuticals, including innovative pharmaceuticals, in the Taiwan authorities' health care system. In July 2015, Taiwan's Ministry of Health and Welfare announced that it would extend the pilot drug expenditure target (DET) program by an additional two years (*i.e.*, 2015 and 2016). The 2013 introduction of the DET pilot program served as an improvement over the less predictable price volume survey system that had preceded it. However, U.S. industry continues to raise concerns over the DET pilot program's inconsistent treatment of different forms of patented pharmaceutical products in price adjustments, the calculation of annual drug expenditure targets, what actions will be taken if targets are exceeded, and the impact of orphan drug and newly introduced vaccine expenditures on the National Health Insurance Administration (NHIA) global budget. At the same time, U.S. industry stakeholders have advocated for a further extension of the DET pilot program for a third two-year pilot period, covering 2017 and 2018, to allow time for additional dialogue to address these concerns. In September 2017, the NHIA announced that the DET pilot program would continue through December 31, 2019. The 2018 target budget was set to be NT $155.95 billion (U.S. $5.2 billion).

In December 2017, Taiwan's Legislative Yuan passed an amendment to the Pharmaceutical Affairs Act calling for the establishment of a mechanism for early resolution of potential patent disputes. In September 2018, Taiwan's Food and Drug Administration (TFDA) published draft implementing regulations that would exclude biologics from full coverage. Specifically, biosimilars (*i.e.*, follow-on biologics) would not be subject to provisions concerning notice and opportunity to seek resolution of potential patent disputes. The United States submitted comments expressing concerns that the exclusion of biologics would be inconsistent with the amendment passed by the Legislative Yuan. On February 5, 2019, Taiwan's Ministry of Health and Welfare (MOHW), which oversees TFDA, notified to the WTO TBT Committee draft implementing regulations that now provide coverage for biologics. If this coverage is included in the final implementing regulations, it will represent a promising step forward for Taiwan in its efforts to develop an innovative pharmaceutical sector.

Medical Devices

Taiwan is a significant market for U.S. medical device exports. Longstanding concerns persist over the Taiwan authorities' systems for medical device product license approvals and pricing review mechanisms. Manufacturing facility registration (known as Quality Systems Documentation, or QSD) is mandatory in Taiwan, regardless of whether a medical device is already on the market, and re-registration is required every three years. Although TFDA makes available a simplified application process for regulatory review of medical devices, U.S. manufacturers continue to express concern with documentary requirements that limit the number of products eligible to benefit from the program. For example, TFDA accepts copies of the U.S. Food and Drug Administration's medical device Establishment Inspection Reports (EIR) of U.S. manufacturers that export to Taiwan in lieu of QSD for the simplified mode of review. However, TFDA requires an EIR issued within the last three years and an ISO 13485 certificate, to qualify for simplified review. Because the U.S. Food and Drug Administration conducts facility inspections using a risk-based approach, rather than on a set timetable, only a small fraction of U.S. products qualify for Taiwan's simplified review using EIR documentation. Adoption of audits performed under the International Medical Device Regulatory Forum's Medical Device Single Audit Program (MDSAP) in lieu of EIRs would simplify procedures.

Moreover, the simplified product registration for specific classes of medical devices is only available to applicants who submit a Certificate of Free Sale/Certificate to Foreign Government from both the United States and the European Union. No other jurisdiction in the world has a similar requirement. This requirement would exclude manufacturers that choose only to seek product approval in either the United States or the European Union and manufacturers that choose to seek approval in one market months or years before the other market.

Self-pay and balance-billing are two mechanisms that have been introduced by Taiwan authorities to allow Taiwan patients the option of choosing medical devices that are not paid in-full by the authorities. At present, the NHIA does not provide reimbursement for implanted devices. Implants, in addition to a range of other commonly used devices not approved for reimbursement, must instead be issued a self-pay code, but this option is currently not available to a range of non-implantable devices. U.S. stakeholders report that hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by the NHIA. To expedite code issuance, in April 2014, the NHIA began assigning temporary self-payment codes for urgent or high-demand medical devices within two months of application. Temporary self-payment codes for new medical devices cannot be issued until the NHIA completes review of new therapeutic procedures in which the device is used, and U.S. industry has suggested that increased process transparency and faster issuance of temporary self-pay codes are needed for new procedures to accelerate patient access to new devices.

The balance billing mechanism, introduced in January 2013, allows partial patient self-pay for high-end devices or new technologies. The NHIA has the authority to introduce price caps that apply ceilings on what patients pay on new balance billing items. Transparency and due process mechanisms are critical in this process, and U.S. stakeholders have expressed concern that the current balance billing system does not effectively distinguish among devices of differing levels of technological sophistication and effectiveness. In 2014, the NHIA established a website used to help consumers compare the cost of devices at different hospitals as a way to address a consumer concern without resorting to setting a balance-billing cap. In 2016, the NHIA increased the frequency of balance billing application reviews from semiannually to quarterly. U.S. stakeholders continue to urge the NHIA to lift balance-billing caps on products with the same functional classifications and to adopt a more flexible approach in allowing hospitals to set charges.

Transparency

In September 2016, Taiwan's Executive Yuan announced the extension of the mandatory notice-and-comment period from 14 to 60 days for proposed laws and regulations originating in executive agencies related to trade, investment or intellectual property rights. While this positive step toward improving regulatory transparency should provide enhanced opportunities for stakeholder input, implementation has been inconsistent.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $19.3 billion in 2018, a 4.2 percent decrease ($848 million) over 2017. U.S. goods exports to Thailand were $12.6 billion, up 14.5 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Thailand were $31.9 billion, up 2.4 percent. Thailand was the United States' 26th largest goods export market in 2018.

U.S. exports of services to Thailand were an estimated $2.9 billion in 2017 (latest data available) and U.S. imports were $3.8 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $5.1 billion in 2016 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $167 million.

U.S. foreign direct investment (FDI) in Thailand (stock) was $15.0 billion in 2017 (latest data available), a 16.7 percent decrease from 2016. U.S. direct investment in Thailand is led by manufacturing, wholesale trade, and professional, scientific, and technical services.

TRADE AGREEMENTS

Thailand is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Thailand, also has preferential trade agreements with other trading partners in the Indo-Pacific and other regions including Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Thailand and the other ASEAN countries signed a free trade agreement with Hong Kong, but it is not yet in force. Thailand has concluded a number of bilateral trade agreements, including ones with Chile and Peru. Thailand is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand. Thailand is exploring possible accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

About half of Thailand’s Most Favored Nation (MFN) applied tariff schedule includes duties of less than 5 percent, and approximately 30 percent of tariff lines are duty free, including for certain chemicals, electronics, industrial machinery, and paper. High tariffs in many sectors, however, continue to hinder access to the Thai market for many U.S. products. While Thailand’s MFN applied tariff rate averaged 12.5 percent *ad valorem* in 2017 (latest data available), *ad valorem* tariffs can be as high as 226 percent; the *ad valorem* equivalent of some specific tariffs (levied mostly on agricultural products) is even higher. Thailand has bound all of its tariffs on agricultural products in its WTO commitments, but only approximately 71.4 percent of its tariff lines on non-agricultural products. The highest *ad valorem* tariff rates apply to imports competing with locally-produced goods, including automobiles and automotive parts, motorcycles, beef, pork, poultry, tea, tobacco, flowers, wine, beer and spirits, and textiles and apparel.

Thailand’s WTO bound tariff rate for agricultural products averaged 39.5 percent *ad valorem*. Its MFN applied tariff rate on agricultural products averaged 25.1 percent in 2017 (latest data available). MFN applied tariff rates on imported processed food products range from about 30 percent to 50 percent. Tariffs on meats, fresh fruits and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent, and the out-of-quota tariff is 73 percent. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples are 10 percent, while duties on pears, cherries, citrus, and table grapes range from 30 percent to 40 percent. In addition, preferential tariff rates for these goods provided to Thailand's free trade agreement partners, including Australia, China, and New Zealand, have negatively affected the competitiveness of U.S. agricultural products in recent years.

Thailand's WTO bound tariff rate for non-agricultural products averages 25.6 percent. Thailand's MFN applied tariffs on industrial goods tend to be much lower than its WTO bound rates, averaging 7.2 percent in 2017 (latest data available). However, Thailand applies high tariffs in some sectors. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, 54 percent to 60 percent on distilled spirits, and 30 percent on certain articles of plastic and restaurant equipment. Thailand applies a 10 percent tariff on most pharmaceutical products, including almost all products on the World Health Organization's list of essential medicines, with the exception of some vaccines, anti-malarials, and antiretrovirals, which are exempt.

Taxes

Regulations implementing the Excise Tax Act (2017) went into effect on September 16, 2017, modifying taxes on seven products, including vehicles, alcohol, cigarettes, non-alcoholic drinks, batteries, crystal glass, and air conditioners, and introducing a mixed tax-rate system with both specific and *ad valorem* duties.

Under the Act, *ad valorem* rates are calculated from the "Suggested Retail Price" instead of the Cost, Insurance, and Freight (CIF) value. The suggested retail price is defined in the Act as "the recommended retail price" that a manufacturer or importer wishes to be the selling price to general consumers. The suggested retail price includes the production cost, management fee, and a standard profit. The recommended retail price calculated on the basis of these items cannot be lower than the final retail price offered to end-users in normal market conditions (exclusive of VAT).

Excise taxes are higher than the regional average on some items, such as tobacco, unleaded gasoline, beer, wine, and distilled spirits. Moreover, while the previous *ad valorem* tax on sugar products was reduced from 20 percent to 10 percent, the Act introduced a specific tax on sugar content.

Nontariff Barriers

Import Licensing

Import licenses are required for the importation of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, and agricultural items. In some cases, imports of certain items not requiring licenses are subject to extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws. For example, importation of processed foods, medical devices, pharmaceuticals, vitamins, or cosmetics requires licensing from the Food and Drug Administration under the Ministry of Public Health. Importation of tungsten oxide, tin ores, or metallic tin in quantities exceeding two kilograms requires permission from the Department of Mineral Resources under the Ministry of Industry. Importation of arms, ammunition, or explosive devices requires licensing from the Ministry of Interior. Importation of antiques or objects of art, whether registered or not, requires permission from the Fine Arts Department under the Ministry of Culture.

Although Thailand has been relatively open to imports of animal feed ingredients, U.S. stakeholders have raised concerns about what they consider to be excessively burdensome requirements for feed products containing certain dairy ingredients. Thailand imposes domestic purchase requirements on importers of several products subject to tariff-rate quotas, including soybeans and soybean meal. Imports of feed wheat are also subject to requirements for the domestic purchase of locally produced corn at above market prices even though feed wheat is not subject to a tariff-rate quota.

Customs Barriers and Trade Facilitation

The provision of incentives to customs officials who initiate investigations or enforcement actions creates conflicts of interest and encourages customs investigations for personal financial gain. U.S. companies report concerns about corruption, and the cost, uncertainty, and lack of transparency associated with the customs penalty/reward system. Thailand is the only major trading nation with such an incentive system, which has been a cause of serious concern for many years among Thailand's trading partners. Ostensibly to address these problems, at least in part, Thailand adopted a new Customs Act on November 13, 2017. The Act removes the Customs Department Director General's discretion to increase the customs value of imports; it also reduces the percentage of remuneration awarded to officials and non-officials from 55 percent to 40 percent of the sale price of seized goods (or of the fine amount). While a welcome development, the reduction of this remuneration is insufficient to address the issue of personal incentives. The United States will continue to press Thailand in bilateral and multilateral fora to eliminate this counterproductive incentives system.

The United States continues to have serious concerns about the lack of transparency in Thailand's customs regime and the improper exercise of significant discretionary authority by Customs Department officials. The U.S. Government and private stakeholders also have expressed concern about Thailand's inconsistent application of the transaction valuation methodology, as well as the repeated use of arbitrary or fictitious values by the Customs Department.

The U.S. Government also continues to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws and regulations, providing adequate public notice, and allowing sufficient time for comments on these proposals.

Thailand has ratified the WTO Trade Facilitation Agreement.

Price Controls

The Thai government, through the Central Commission on Price of Goods and Services, has the legal authority to control prices or set *de facto* price ceilings for selected goods and services, including staple agricultural products (such as sugar, pork, cooking oil, condensed milk, and wheat flour), liquefied petroleum gas, medicines, and sound recordings. The controlled list is reviewed at least annually, but these price-control review mechanisms are non-transparent. In practice, Thailand's government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum and aviation sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Alcoholic Beverage Labeling Requirements

In 2017, Thailand's Office of Alcohol Control revised its 2015 regulation on "The Rules, Procedure and Condition for Labels of Alcoholic Beverages." It appears that Thailand is not enforcing the new regulation; it remains unclear whether the implementation of the 2017 revisions will address concerns by Thailand's trading partners and alcohol importers with the 2015 regulation regarding its lack of clarity, including its relation to specific enforcement procedures, as well as the nature of terminology, advertising claims, and statements that businesses are permitted to print on labels for alcoholic beverages. The United States will continue to seek clarification on this measure, including in meetings under the U.S.-Thailand Trade and Investment Framework Agreement (TIFA).

Alcohol Certificate of Analysis

Thailand intends to implement the Finance Ministry's "Ministerial Notification on Importation of Spirits into the Kingdom of Thailand, BE 2560," by September 2019. This measure will require an alcohol certificate of analysis (COA) or product sample testing to be submitted for import permit applications. Some required tests may exceed what U.S. standards call for and present an additional barrier to alcohol imports. The U.S. Department of Agriculture (USDA) and U.S. private stakeholders are providing feedback to Thailand's Excise Department on the proposed regulations in an effort to avoid trade disruptions.

Sanitary and Phytosanitary Barriers

Animal-Derived Products

On July 25, 2017, the Department of Livestock Development (DLD) officially listed seven animal-derived products, including meat, meat and bone meal, and feather meal, the importation of which is subject to a facility audit in the exporting country. Each audit approval is valid for five years. In addition, under a separate notification on the same date, the DLD imposed five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products, including poultry meat meal, poultry by-products meal, feather meal, blood meal, plasma powder, egg powder, poultry fats and/or oils, and palatability enhancers or flavoring agent innards. The United States has pressed Thailand to adopt a systems approach on audits to reduce the expense and burden of this requirement. Given the limited capacity of the Ministry of Agriculture and Cooperatives, the individual facility-audits requirement will impede the ability of U.S. producers to enter the market.

Beef and Beef Products

Thailand restricts beef offal imports. The U.S. Department of Agriculture (USDA) requested clarification on the definition of muscle cuts, and DLD confirmed that the list of eligible U.S. uncooked beef products for import includes tongue, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt. USDA is working with the Thai DLD to gain market access for edible and inedible U.S. beef offal products. In September 2018, DLD conducted an audit of the U.S. production system. USDA expects to receive the audit results by early 2019.

Pork

In 2012, after the Codex Alimentarius Commission established maximum residue levels (MRLs) for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, such as the United States. However, it has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. The United States has repeatedly raised this issue with Thailand. In response to a petition from the National Pork Producers Council (NPPC), the Office of the United States Trade Representative (USTR) is reviewing Thailand's eligibility for the U.S. Generalized System of Preferences (GSP) program because of lack of progress on the pork market access issue.

Poultry

Thailand imposes bans on U.S. live poultry and poultry meat due to the sporadic presence of highly pathogenic avian influenza (HPAI) in the United States, notwithstanding World Organization for Animal Health (OIE) guidelines that recommend importing countries regionalize their bans rather than apply them on a country-wide basis. Thailand has banned U.S. turkey meat since late 2014. The United States and Thailand are working to schedule an audit for U.S. turkey meat, an important step towards reopening the market to U.S. turkey. The United States has repeatedly urged Thailand to adopt an OIE-consistent "regionalization" policy and to accept poultry products from areas of the United States not affected by HPAI. U.S. chicken and chicken products are also subject to a non-transparent import permitting process, which serves as a barrier keeping these products out of the Thai market.

Import Fees

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee level was set in October 2016 at 7 baht/kilogram ($215/metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht/kg ($92/MT) for imported uncooked meat for purposes other than food or feed. These fees are significantly higher than the ceiling rates for the equivalent domestic slaughtering fees and appear disproportionate to the cost of services rendered. Under the Thai Animal Epidemics Act of 2014, DLD has discretionary authority for up to a five-fold increase in these import fees. The United States continues to press Thailand to address concerns about the apparently discriminatory nature of these fees.

SUBSIDIES

The Thai government operates various subsidy programs under the Investment Promotion Act (1977) (Amended 1991, 2001, and 2017) (IPA), which are administered by the Board of Investments (BOI). Under the IPA, the BOI exercises discretion in providing various incentives for, among other things, passenger cars and large-size motorcycles, energy conservation, alternative energy and eco-friendly products, high-technology businesses, and new product manufacturing. These incentives include reductions and exemptions from income tax and import duties, double deductions for transportation, electricity, and water costs, and deductions for infrastructure installation and construction costs, in addition to normal depreciation. Additionally, pursuant to the Industrial Estate Authority Act (No. 4), B.E. 2550 (2007), the Industrial Estate Authority of Thailand operates an incentive program called the Skill, Technology and Innovation Scheme, which provides supplemental income tax exemptions to promote technological innovation. The Thai government also operates certain other programs, information about which is not covered in its subsidy notification to the WTO, to promote exports. These include 200 percent tax deductions for business expenses related to research and development, job training, and special measures/equipment for disabled persons.

The government maintains several domestic support programs to stabilize domestic rice prices during the harvest season. Through its rice-pledging program, the government provides a price guarantee by offering to purchase rice pledged to the program at a set price. The pledging price was 11,800 baht per metric ton for fragrant rice (U.S. $360/MT) and 7,500 baht per metric ton (U.S. $229/MT) for white rice. Additionally, the government provides subsidies of 1,500 baht per metric ton ($46/MT) for farmers' storage costs and a direct payment of 1,500 baht per rai ($288 per hectare) for certain harvest and post-harvest handling expenses up to a maximum of 12 rai (1.9 hectare per household). The government also provided low interest loans to rice traders, millers, and farmer institutions to purchase and hold rice between October and December 2018. The total target for all of the 2018-2019 domestic rice support programs is 9 million metric tons of paddy rice, which accounts for around 40 percent of total main-crop rice production.

GOVERNMENT PROCUREMENT

On August 23, 2017, the Public Procurement Act replaced the Prime Minister's 1978 Procurement Regulations as the primary legal authority governing public sector procurement. The Act covers approximately 90 percent of government purchases and construction projects.

The Thai government introduced its Thai Innovation List in 2016 to develop domestic industrial capacity in several innovation-centered economic sectors, including pharmaceuticals and medical products. Only authorized Thai majority-owned companies may list products on the Innovation List, which grants special government procurement privileges for such products. Thai government agencies and public hospitals must spend at least 30 percent of their budget on pharmaceutical and medical products on this list. There are over 120 pharmaceutical and medical products, all of which are generic products, included on the list.

Thailand is not a signatory to the WTO Agreement on Government Procurement (GPA), but it became an observer to the WTO Committee on Government Procurement in 2015.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In December 2017, the United States concluded a Special 301 Out-of-Cycle Review of Thailand and moved Thailand from the Priority Watch List to the Watch List, where Thailand remained in 2018. The U.S. Government has been closely engaging with Thailand on improving intellectual property rights (IPR) protection and enforcement under the U.S.-Thailand TIFA. This engagement has yielded results in addressing U.S. concerns across a range of issues, including with respect to IPR enforcement, as well as patents and pharmaceuticals, trademarks, and copyrights.

The Thai government is in the process of amending the Patent Act in an effort to increase efficiency in patent processing, and has recruited more patent and trademark examiners to work on reducing the patent and trademark backlog and pendency. In addition, a pending copyright law amendment draft contains provisions on notice and take-down and technological protection measures.

Although concerns with IPR protection and enforcement remain, Thailand has taken steps to address piracy and counterfeiting through raids, surveillance measures, and legal amendments, as well as public awareness campaigns. The United States continues to urge Thailand to increase the scope and frequency of effective IPR enforcement, particularly against online IPR violations, and to impose sentences that would deter potential offenders.

Other U.S. concerns include widespread use of unlicensed software in both the public and private sectors, extensive cable and satellite signal theft, the camera recording of motion pictures in cinemas, and the continuing lack of effective enforcement against online piracy and counterfeiting. The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to develop new laws and regulations, including on pharmaceutical-related issues, through a more transparent process that takes into account the views of rights holders and incorporates effective notice and comment processes.

SERVICES BARRIERS

Audiovisual Services

The Motion Picture and Video Act gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films, although the Film Board has not exercised that authority to date. The Thai Ministry of Culture is in the process of reviewing the aforementioned law. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Engineering Services

Thailand's Engineering Act assigns four classifications of engineering professionals: senior professional engineer, professional engineer, associate engineer, and adjunct engineer. Foreign engineers can only be certified as adjunct engineers, the lowest classification, regardless of qualifications. Applicants must pass an oral exam in Thai language (an interpreter with no engineering background can be used during the oral exam). Businesses have expressed concerns that the restrictions allow foreigners to work only in a small set of civil engineering services, and that local members of the profession control the onerous process in order to limit competition.

Express Delivery

Private express delivery companies must pay postal fees and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than $1) for shipments that weigh up to two kilograms. Thailand also imposes a 49 percent limit on foreign ownership of companies providing land transport services.

Financial Services

Foreign banks can gain entry into the Thai banking system in two ways—by obtaining a license or by acquiring shares of existing domestic banks. Thailand limits the number of licenses for foreign bank branches and subsidiaries and accepts applications only periodically. The latest round of applications for new licenses was in 2013. Consistent with the Financial Sector Master Plan Phase 2, five new foreign full banking licenses to operate as a subsidiary were made available. Out of the five licenses allowed by the quota, Thailand granted new subsidiary licenses to two foreign banks. In addition, Thailand may grant new foreign banking licenses to banks from certain countries, subject to Thai banks being offered reciprocal treatment. Under this program, Thailand has started to offer foreign banking licenses to banks from ASEAN countries under the ASEAN Banking Integration Framework.

Foreign investment in existing domestic banks is limited to 25 percent of shares, although the Bank of Thailand can raise this amount to 49 percent on a case-by-case basis. In addition, the Minister of Finance, with a recommendation from the Bank of Thailand, may authorize foreign ownership above 49 percent if it is deemed necessary to support the stability of a financial institution or the overall financial system during an economic crisis.

Foreign bank branches and subsidiaries can supply all types of financial services offered by local banks. In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premise ATMs, and appointed agents. Foreign subsidiaries may now operate up to 40 service points, while foreign branches may open a maximum of three service points.

Since 2013, Thailand has required processing in Thailand of all retail domestic debit electronic payment transactions for debit cards issued in Thailand. This requirement precludes foreign suppliers from supplying electronic payment services cross-border. Rather, foreign suppliers seeking to process electronic payment transactions must establish a local presence and build processing facilities in Thailand.

Foreign equity in life and non-life insurance companies is limited initially to less than 25 percent of the total number of voting shares that have been sold, and foreign directors may hold no more than 25 percent of the board of director seats. However, in 2015 and 2016, the Thai government relaxed the criteria for the Office of Insurance Commission (OIC) to allow a company to increase the foreign equity permitted to up to 49 percent and the seats held by foreign directors to up to one half of the board, if the company meets conditions relating to improving efficiency and competitiveness. In addition, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector, the Ministry of Finance, with the recommendation of the OIC, may permit a company to have foreign ownership exceeding 49 percent or foreign directors comprising more than one-half of the board or both. The OIC is in the process of amending the law to relax restrictions on the foreign ownership of insurance companies. The draft amendment would grant the OIC Board, instead of the Ministry of Finance, the authority to approve the increased foreign equity and foreign directors. Nonetheless, the OIC approval must be in accordance with criteria, procedures, and conditions or timeframe determined by the Ministry of Finance.

Professional Services

Legal Services

U.S. investors may own law firms in Thailand only if they enter into commercial association with local attorneys or local law firms, and U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Accounting Services

Thailand's Foreign Business Act reserves accounting services for Thai nationals unless specific, onerous conditions are met. As a result, foreigners cannot serve as professional accountants in Thailand. In addition, foreign nationals cannot be licensed as certified public accountants unless they are citizens of a country with a reciprocity agreement, pass the required examination in Thai, and legally reside in Thailand. Foreign accountants may serve as business consultants. Regarding business operations, foreigners are permitted to own only up to 49 percent of an accounting professional service and only through a limited liability company registered in Thailand.

Telecommunications Services

Thai law allows foreign equity up to 49 percent in basic telecommunications service providers and higher levels of foreign equity for providers of value-added services. This constitutes an improvement on the 20 percent foreign equity cap listed in Thailand's provisional 1997 WTO commitments. However, Thailand has not revised its WTO General Agreement on Trade in Services (GATS) schedule, as it committed to doing, to reflect these higher foreign-equity limits and its adoption of pro-competitive regulatory measures (*e.g.*, mandatory interconnection). Thailand also maintains regulations to restrict "foreign dominance" in telecommunications operators, which the National Broadcasting and Telecommunications Commission has defined as holding at least half of all voting rights, having controlling power over the majority vote in shareholder meetings or having the ability to appoint or remove half of directors.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Technology

Thailand's National Legislative Assembly (NLA) passed the National Cybersecurity Act on February 28, 2019. The law is designed to strengthen the cybersecurity capabilities of government agencies and to provide breach notification procedures. U.S. stakeholders have raised concerns that the law would grant a new Office of the National Cybersecurity Committee (also referred to as the National Cybersecurity Agency) broad powers to demand confidential and sensitive information without sufficient protections to circumscribe such access or to appeal the Committee's decisions.

On February 28, 2019, the NLA passed the Personal Data Protection Act. U.S. stakeholders have raised concerns that the law creates unreasonable burdens and legal uncertainty in the technology sector, raises potential impediments to international data transfers, and gives over-broad powers to the Personal Data Protection Committee (PDPC) and Expert Committees.

Internet Services

In December 2016, Thailand's legislature amended the Computer Crime Act of 2007. The amendments became effective in 2017, leading to regulatory changes that greatly expanded the authority of the Thai government to regulate online content. Among these changes was the creation of a "Computer Data Filtering Committee," which has the power to obtain court approval to block websites that the Committee finds disseminate computer data that violate public order or intellectual property rights. Over the past year, the Thai government has greatly increased the number of social media posts it has blocked. There has never been a successful appeal or reversal of the Committee's decisions.

The amended Computer Crime Act raises particular concerns for online services that host user-generated content. For the first time, the 2016 amendments established a safe harbor for service providers that comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers will be subject to penalties as though they had created the offending content themselves. This places a considerable burden on online services that depend on user-generated content, discouraging investment and encouraging proactive censorship by consumers.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company that is not registered in Thailand, or a company in which foreign ownership accounts for 50 percent or more of total shares) must obtain an alien business license from the relevant ministry before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. However, U.S. investment is prohibited under the AER in the following areas: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, domestic trade in indigenous agricultural products, and the practice of professions or calling reserved for Thai nationals. Thailand reserves the following occupations for Thai nationals: tour guides, clerks and secretaries, attorneys, accountants, civil engineers, architects, farmers, construction workers, drivers and vehicle operators, jewelry makers, hairdressers, weavers, a variety of handicraft makers, and tailors.

OTHER BARRIERS

U.S. stakeholders have expressed concern that processes used by the Thai government for revising laws and regulations affecting trade and investment lack consistency or transparency.

There are serious concerns about Thailand's increasingly unpredictable and opaque pharmaceutical procurement regulations. The Government Pharmaceutical Organization, a State-owned entity, is not subject to Thai Food and Drug Administration (FDA) licensing requirements on the production, sale, and importation of pharmaceutical products. U.S. stakeholders have expressed concerns about the lack of transparency and due process in the administration of the Thai government's National List of Essential Drugs for procurement of pharmaceutical products dispensed at government hospitals. The Thai Ministry of Public Health currently sets the "median price or maximum procurement price" (MPP) for each medicine included on the Main Price List of Essential Drugs. Only medicines included on this list are eligible for government procurement. The current methodology and implementation of the MPP policy lacks transparency, predictability, and uniformity. Finally, there are concerns about planned changes to the Drug Act that could affect negatively the registration of patented medicines. The proposed draft amendment would require applicants for drug registration to disclose patent documents as part of their dossiers. The draft amendment does not explain how the Thai Food and Drug Administration would use such documents, nor does it detail if and how the required patent-related submission data would be cross-checked to ensure that new certifications do not conflict with any existing patents.

Bribery and Corruption

Despite ongoing legislative and administrative efforts to address corruption, the issue continues to hamper Thailand's economy and trade. The National Anti-Corruption Commission (NACC) is the primary body vested with powers and duties to counter corruption in the public sector. However, several agencies have jurisdiction over corruption issues, and their actions are not always complementary. Thai law enforcement's investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to be employed unevenly and for political purposes, and the lack of transparency in many administrative procedures serves to facilitate corruption.

In October 2017, NACC issued "guidelines on appropriate internal control measures for juristic persons to prevent bribery of state officials, foreign public officials, and agents of public international organizations" to address the supply side of corruption.

On July 22, 2018, a new anti-corruption law (known officially as the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption B.E. 2561 (2018)) came into effect, repealing and replacing the 1999 Organic Act on Counter Corruption and its various amendments. The new anti-corruption law maintains a key provision criminalizing bribe-giving by legal entities but expands the definition of the legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, etc.). The mandatory fines for bribery are at least an equal amount of the benefit received from the corrupt act, but not more than twice that amount. The 2018 law allows NACC to seek international cooperation in investigations.

TUNISIA

TRADE SUMMARY

The U.S. trade balance with Tunisia shifted from a goods trade surplus of $82 million in 2017 to a goods trade deficit of $52 million in 2018. U.S. goods exports to Tunisia were $597 million, up 9.8 percent ($53 million) from the previous year. Corresponding U.S. imports from Tunisia were $649 million, up 40.6 percent. Tunisia was the United States' 93rd largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Tunisia (stock) was $279 million in 2017 (latest data available), a 12.0 percent decrease from 2016.

TRADE AGREEMENTS

Tunisia has had an Association Agreement with the European Union (EU) covering the trade of goods since 1998. Tunisia began negotiations with the EU in April 2016 on a Deep and Comprehensive Free Trade Agreement (DCFTA) that would go beyond the current Association Agreement to liberalize trade in agriculture and services and include disciplines on labor and the environment. Tunisia also has free trade agreements that grant tariff preferences for imported goods from European Free Trade Association members, Turkey, and several countries in North Africa. Tunisia has bilateral trade agreements with approximately 80 countries and joined the Common Market for Eastern and Southern Africa (COMESA) in July 2018.

IMPORT POLICIES

Tariffs

Imported goods in Tunisia can be subject to tariff rates as high as 200 percent. Tunisia's 2018 Finance Law increased tariffs on certain products. Tariff rates increased to 30 percent on products such as consumer washing machines and video monitors. In addition, some products originally exempt are now subject to a 15 percent tariff such as: soda ash, lubricating oils, soap, pesticides, natural pearls, and dishwashers. Agricultural goods are subject to customs tariffs ranging from 0 percent to 36 percent, with most agricultural imports at the high end of that range. Goods are also subject to a customs formality fee, currently amounting to 3 percent of the total duties paid on the import. Prior to the 2018 increases outlined above, Tunisia had reduced its average Most Favored Nation (MFN) applied tariffs from about 45 percent in 2006 to 20 percent in 2017.

Nontariff Barriers

Tunisia maintains a number of nontariff barriers. Approximately three percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Ministry of Trade. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods have to request an allotment from the government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade. A number of agricultural products are also subject to technical import requirements set out in a Book of Specifications.

Tunisian law prohibits the export of foreign currency from Tunisia as payment for imports prior to the presentation to a bank of documents confirming shipment of the merchandise from the destination country. In addition, the Central Bank of Tunisia prohibits Tunisian purchasers from using foreign currency to pay for specific imported goods until their banks confirm that they have sufficient foreign currency in their accounts. These requirements remain a source of confusion and difficulty for some U.S. companies.

In October 2017, the Central Bank ordered member banks to cease issuing letters of credit to importers of a list of goods deemed to be non-essential consumer products. In November 2018, the Ministry of Commerce announced it would impose additional controls on a variety of imported agricultural and nonagricultural goods according to technical specifications in an attempt to reduce Tunisia's trade deficit.

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports into the country. Official government policy forbids discrimination against foreign suppliers, but some companies complain that they face pressure to lower drug prices in order to obtain market authorization.

Customs Barriers and Trade Facilitation

Customs processing remains cumbersome, labor intensive, and, for the most part, reliant on the review of paper documents. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Risk management and other targeting is primarily conducted manually by reviewing large volumes of entry documents in paper form.

In February of 2016, Tunisia ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). However, Tunisia has yet to officially deposit the instrument of ratification to the WTO.

In May, 2011, Tunisia notified to the WTO its national legislation incorporating provisions of the WTO Agreement on Customs Valuation. However, Tunisia has yet to submit to the WTO Committee on Customs Valuation replies to the Committee's checklist of issues regarding implementation and administration of the Agreement.

SANITARY AND PHYTOSANITARY BARRIERS

Tunisia administers strict import requirements for meat, poultry, and egg products for various animal and public health reasons. Tunisia also does not accept the U.S. Department of Agriculture (USDA) Form 9060-5 for U.S. meat and poultry products or Form 9060-5EP for egg products. The USDA and the Ministry of Agriculture exchanged correspondence in 2018 on health certificates for these products but have yet to reach an agreement.

In 2018, the United States submitted written comments through the WTO on a number of sanitary and phytosanitary (SPS) measures enacted by Tunisia, but not formally notified to the WTO, including a ban on imports of U.S. citrus, apples, and pears, as well as a strict tolerance level for deoxynivalenol in wheat.

SUBSIDIES

Companies producing for the export market benefit from duty-free import of capital goods with no local equivalents. These companies also benefit from a full tax and duty exemption on raw materials, semi-finished goods, and services necessary for operation.

The Export Promotion Fund (FOPRODEX), a state fund managed by the Export Promotion Center (CEPEX), provides financial support to Tunisian resident exporting companies. This fund partially finances a range of promotional actions in target countries, with a preferential rate for exports to sub-Saharan African countries. Activities receiving partial support include market research, participation in trade fairs and international bids, visits for international buyers, and the development of marketing and branding materials.

GOVERNMENT PROCUREMENT

The High Committee on Public Procurement (HAICOP), within the Prime Ministry, represents the highest authority for examination, auditing, recourse, and assistance in all public procurement operations. As of September 2018, all public procurement operations are conducted electronically through a bidding platform called Tunisia Online E-Procurement System (TUNEPS). Bids must be evaluated on the basis of, "the lowest bid that meets the specifications." However, this does not apply to procurements by the Ministry of Defense, Ministry of Interior, the three major state banks, and other ministries when their procurements relate to security.

U.S. wheat exports are effectively blocked from state procurement due to narrow requirements dictated in a Book of Specifications in use by Tunisia's state cereals office that imposes stricter technical requirements on U.S. origin wheat than on wheat of other origins.

Tunisia is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement, but has expressed interest in becoming an observer.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Inadequate intellectual property (IP) rights protection and enforcement remain serious concerns in Tunisia. The prevalence of, and trade in, counterfeit and pirated goods is widespread. Though customs officials have the authority to inspect and seize counterfeit and pirated goods, the officials often lack the ability to identify these illicit goods. The United States will continue to engage with Tunisia to improve IP rights protection and enforcement in the region.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

The Tunisian Dinar is a non-convertible currency, so Tunisian credit and debit cards cannot be used for transactions in foreign currencies, including purchases on foreign electronic commerce platforms. The Tunisian government is working with the Central Bank of Tunisia on a reform of the foreign exchange code that may eliminate some of these restrictions.

INVESTMENT BARRIERS

Entering Tunisia's domestic market, particularly the services sector, remains difficult for foreign investors. Foreign investment is limited to 49 percent in many sectors, and the process of investing is particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia's investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian government, which assesses the potential benefit of the investment to the Tunisian economy. Investors in Tunisia frequently complain of delays, lack of transparency regarding rules and fees, competition from state-owned enterprises, and other bureaucratic complications in the process of registering a business.

Provisions in Tunisian commercial legislation designed to protect minority shareholder interests confer disproportionate influence on Tunisian minority partners.

On April 1, 2017, a new Tunisian Investment Law intended to facilitate increased foreign investment into Tunisia took effect. In May 2018, the government adopted ministerial decree No. 417, publishing a list of 100 economic activities in sectors requiring government authorization for investment. The sectors include: natural resources and construction materials; transportation by land, sea, and air; banking; finance; insurance; hazardous and polluting industries; health; education; telecommunications; and services.

ANTICOMPETITIVE PRACTICES

State-owned enterprises (SOEs) maintain monopolies in key economic sectors considered sensitive by the government, such as railroads, water and electricity distribution, and power generation. These monopolies limit opportunities for U.S. and other foreign companies in these sectors. Importation of basic staples and strategic items such as cereals, sugar, edible oil, and steel also remain under SOE control.

OTHER BARRIERS

Although the government of Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies across a range of sectors report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

TURKEY

TRADE SUMMARY

The U.S. trade balance with Turkey shifted from a goods trade surplus of $328 million in 2017 to a goods trade deficit of $143 million in 2018. U.S. goods exports to Turkey were $10.2 billion, up 4.6 percent ($453 million) from the previous year. Corresponding U.S. imports from Turkey were $10.3 billion, up 9.8 percent. Turkey was the United States' 28th largest goods export market in 2018.

U.S. exports of services to Turkey were an estimated $3.0 billion in 2017 (latest data available) and U.S. imports were $1.8 billion. Sales of services in Turkey by majority U.S.-owned affiliates were $4.4 billion in 2016 (latest data available), while sales of services in the United States by majority Turkey-owned firms were $99 million.

U.S. foreign direct investment (FDI) in Turkey (stock) was $4.3 billion in 2017 (latest data available), a 10.7 percent increase from 2016. U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and finance/insurance.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

In accordance with its customs union agreement with the European Union (EU), Turkey exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to third-country non-agricultural imports, including those from the United States. Turkey also exempts from tariffs non-agricultural products imported from other trading partners with which it has concluded free trade agreements. Turkey has bound just over half of its tariff lines under the WTO, a relatively low percentage for an economy of its size.

Turkey's MFN applied tariff rate averages 43.1 percent for agricultural products and 5.8 percent for non-agricultural products as of 2017 (latest data available), while its WTO bound rates are 61.8 percent and 17.3 percent, respectively. Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 20 percent to 162 percent, while the range for poultry tariffs is between 30 percent and 75 percent. On August 14, 2018, the Turkish government started to apply tariff quotas on wheat, barley, and corn. The government will apply zero percent tariff rates until May 31, 2019 for wheat imports up to 750,000 tons, and barley imports up to 700,000 tons. Until July 31, 2019, a zero percent tariff rate will apply to corn imports up to 700,000 tons.

Turkey recently has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors. Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products classified in 50 Harmonized System chapters, affecting a wide range of sectors, including furniture, medical equipment, tools, iron, steel, footwear, carpets, and textiles.

The Turkish government also levies high tariffs, excise taxes, and other domestic charges on imported alcoholic beverages and tobacco products that increase wholesale prices for these products considerably.

On June 21, 2018, Turkey imposed additional duties, in retaliation against the President's decision in March to take action on imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended, that threaten to impair U.S. national security.

In August 2018, in response to a U.S. decision to double initial Section 232 tariffs on Turkish steel exports, Turkey imposed a doubling of its June duties on more than 20 tariff lines for U.S. originating goods, including a 120 percent tariff on passenger cars and parts, a 140 percent tariff on alcoholic drinks, and a 60 percent tariff on leaf tobacco.

Taxes

On November 1, 2018, Turkey lowered its special consumption tax by 15 percentage points on motor vehicles with engines smaller than 1600cc. The special consumption tax on motor vehicles currently ranges between 30 percent to 160 percent, depending on engine size, and has a disproportionate effect on automobiles imported from the United States, which are generally larger models.

Nontariff Barriers

Import Licensing

Turkey requires import licenses for some agricultural products and for various products that need after-sales service such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade.

Import Restrictions

Turkey in 2015 banned the import of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Turkey also requires that construction equipment, tractors, and agricultural equipment imported from abroad be imported during the year in which it is manufactured, effectively limiting (given long lead times for shipment) the amount of U.S. exports of such equipment to Turkey.

Customs and Trade Facilitation

Turkish documentation requirements for food imports are onerous, inconsistent, and non-transparent, often resulting in shipments delayed at Turkish ports. U.S. exporters of rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns with decisions by Turkish customs authorities on the valuation of some of their products.

Turkey ratified the WTO Trade Facilitation Agreement (TFA) in March 2016. Turkey has designated all commitments under Section I as Category A. However, Turkey has yet to provide to the WTO the relevant information under the TFA's transparency provisions, which was due to the WTO Secretariat by entry into force of the Agreement on February 22, 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pharmaceuticals – Good Manufacturing Practices Certification

Turkey's amended "Regulation on the Pricing of Medicinal Products for Human Use," which took effect on March 1, 2010, requires foreign pharmaceutical producers to secure a good manufacturing practices (GMP) certificate based on a manufacturing plant inspection by Ministry of Health (MOH) officials before their products can be authorized for sale in Turkey.

Prior to 2010, Turkey's MOH recognized GMP inspections performed by the U.S. Food and Drug Administration or the European Medicines Agency as sufficient to confirm that Turkey's GMP requirements were met. However, the 2010 regulation requiring that Turkish authorities themselves perform the inspections has led to severe delays in obtaining GMP certifications for many pharmaceutical products because of an MOH inspection backlog which has grown significantly. U.S. manufacturers report that these delays have effectively closed the Turkish market to certain new innovative drugs awaiting registration and approval. The delay in GMP inspections has prolonged MOH's already lengthy processes for granting final approvals to place these products on the Turkish market. In response to repeated U.S. Government requests, including at senior levels, seeking to speed up the timeframe for market access approval, Turkey's MOH authorized parallel submission (rather than sequential submission) of GMP inspection and marketing approval applications for "Priority One" pharmaceuticals imported from U.S. and European Union (EU) firms. While a positive step, the MOH has not yet formalized this approach, nor has it applied the approach to all pharmaceutical product applications.

Livestock Genetics Import Requirements

In February 2016, Turkey modified its livestock genetics import regulation to allow greater diversity of genetics to enter the country, partially easing this trade barrier. Some of the regulation's previously strict minimum genetic criteria rules were removed, which broadened the variety of genetics that can be imported. Still remaining in the regulation are onerous minimum requirements for live motile sperm cells for conventional and sorted semen.

Food and Feed Products – Mandatory Biotechnology Labeling

In 2010, Turkey enacted a comprehensive Biosafety Law, which, *inter alia*, mandates the labeling of food or feed derived from agricultural biotechnology if the biotechnology content exceeds a certain threshold. The requirement for such labeling is purportedly for public health reasons. The Biosafety Law also requires that Genetically Modified Organism ("GMO") labels on certain food products include health warnings. The Turkish government, however, has provided no scientific evidence for requiring these health warnings.

In addition to these requirements, the Biosafety Law also mandates onerous traceability procedures for all movement of biotechnology-derived animal feed, including a requirement that each handler maintain traceability records for 20 years.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Although Turkey notified the Biosafety Law to the WTO Committee on Sanitary and Phytosanitary (SPS) Measures prior to its original enactment, the Turkish government has failed to notify subsequent revisions of the law and its implementing regulations and various regulatory controls. U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual biotechnology traits due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment of individual biotechnology traits, and concerns regarding the protection of applicants' confidential information.

Following the move to an Executive Presidency in Turkey in 2018, the Biosafety Board established under the Biosafety Law was abolished and the approval process and authority for biotechnology approvals is being updated. The former Biosafety Board rejected applications submitted by Turkish importers for approval of a number of corn and soybean biotechnology traits without providing scientific justification. To date, a total of 36 traits, of which 10 are soybean and 26 are corn, have been approved for use in animal feed in Turkey. No genetically engineered products have been approved for food use or cultivation. No traits have been approved since August 2017, which has led to market access problems for U.S. products. Thirteen applications are still pending.

The Turkish government's delays in reaching approval decisions are exacerbated by its impractical low level presence policy. If a shipment tests positive for the presence of an unapproved biotechnology trait at any level, the cargo is rejected and cannot be used for feed or food. There is an exception to this prohibition for unapproved traits with pending approval applications for use in feed; such traits are allowed to be present up to a 0.1 percent threshold. For cargo intended to be used for feed there is tolerance for up to a 0.9 percent presence in a shipment of approved (but not declared) biotechnology traits, but it is unclear how this exception is being applied in practice.

Turkey has also imposed onerous and unpredictable biotechnology-focused testing requirements for certain U.S. food and feed imports. Turkish authorities began requiring testing of every shipment of U.S. wheat imports for any biotechnology content in 2013 following a single detection of an unapproved wheat biotechnology trait. The testing has been limited to U.S. wheat imports, even though wheat imports from any country are equally likely to test positive for trace amounts of unapproved biotechnology traits. The testing requirements have negatively affected U.S. wheat shipments to Turkey, as well as other commodities. Turkey also requires certifications from the country of origin that products exported to Turkey have not been produced using microorganisms derived from agricultural biotechnology. Many products have been rejected at Turkish ports for lack of the required certifications.

Food Safety

Turkey's efforts to harmonize its national food safety laws with EU requirements have the potential to impede U.S. trade. For example, U.S. producers of table grapes have expressed concerns that Turkey's efforts to harmonize its pesticide Maximum Residue Levels (MRLS) with EU MRLS have the potential to put imports from the United States at a disadvantage compared to imports from EU suppliers.

In June 2013, Turkey began to require dioxin-free certification for imports of animal feed and pet food products. This requirement negated a 2006 United States-Turkey bilateral agreement under which Turkey accepted that imports of animal feed and pet food products from the United States did not require this certification. Turkey has not provided any evidence that products from the United States contain dioxins.

The importation of live animals and of animal products requires a control certificate from Turkey's Ministry of Food, Agriculture and Livestock. The issuance of this certificate is not automatic.

Plant Health

Turkey has sporadically rejected imports of U.S. unmilled rice due to detection of white tip nematode. Turkey considers white tip nematode to be a quarantine pest despite the fact that this nematode is widespread in Turkey. Due to the risk of a detection of the nematode upon arrival, many U.S. rice exporters have stopped shipping to Turkey.

Due to an inconsistency in its harmonization with EU phytosanitary certificate requirements, Turkey requires a maximum 14-day interval from inspection date to export date, rather than from certificate issue date to export date. Due to internal transit times to ports, this can impact all U.S. plant commodities that are inspected prior to export to Turkey.

Animal Health

Turkey is an important transit point for U.S. poultry shipped to Iraq and the Middle East. Turkey's policy of banning the transit of poultry meat imports from high pathogenic avian influenza-affected U.S. states, as well as U.S. states with identified cases of avian influenza in wild birds or identified cases of low pathogenic avian influenza, do not appear to be consistent with the science-based recommendations of the World Organization for Animal Health (OIE).

SUBSIDIES

Turkey is significantly overdue on its required WTO notifications on agricultural domestic support and export subsidies. Although Turkey has large agricultural support programs in place, which include price support programs and input subsidies, it has not submitted a notification to the WTO since 2004. Turkey has not notified export subsidies since 2000. The United States and other WTO members have raised this transparency concern with Turkey on numerous occasions at the WTO. Additionally, U.S. exporters have expressed concerns about Turkey's subsidies and inward processing scheme for wheat. There is no monitoring within the scheme to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour, which is a required component of an inward processing scheme under the WTO Agreement on Subsidies and Countervailing Measures.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement (GPA) but has been an observer to the WTO Committee on Government Procurement since 1996.

Turkish government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Additionally, Turkish procurement law sometimes requires government contracting agencies to accept only the lowest-cost bids in response to tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, *i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products.

Several other features of the Turkish procurement system have the effect of severely limiting the ability of U.S. companies to participate in government tenders. First, Turkish contracting agencies are able to impose "no-limitation-of-liability" clauses on successful bidders. Such clauses render contractors liable for all costs resulting from design or application errors or lack of supervision. Second, Turkish procurement law mandates the use of model contracts, *i.e.*, standard forms, which many government procuring agencies refuse to modify. These model contracts make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. Third, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies.

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments by bidding firms, including in the areas of foreign direct investment and technology transfer. Such requirements can dramatically increase costs for bidding firms, and have discouraged participation by some U.S. companies in Turkish commercial defense tenders. Non-military tenders, before 2014, also utilized commercial offset requirements, although not as frequently.

In February 2014, the Turkish parliament adopted an Omnibus Bill that gives civilian government ministries the authority to impose commercial offset requirements in procurement contracts. Similar to the military offset requirements, this law requires a foreign company that wins a Turkish government procurement contract to produce a certain percentage locally or with a local partner in order to provide its products and services. The government is focusing on implementing offset requirements in the pharmaceutical, medical devices, commercial aircraft, and energy sectors, among others.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2018, Turkey remained on the Watch List in the annual Special 301 Report in light of intellectual property rights (IPR) issues that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Turkey of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the judicial system as a whole, including judges, prosecutors, and police, have increasingly failed to address IPR-related crime While the entry into force of Turkey's Industrial Property Law and implementing decrees brought industrial property rights under a single law, increased the capacity of the Turkish Patent Office, and improved the legal framework for technology commercialization and transfer, IPR enforcement in Turkey still suffers from a lack of awareness and training among judges, as well as a lack of prioritization among government bodies of efforts to combat IPR crimes.

SERVICES BARRIERS

Professional Services

In the area of professional services, Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization

Localization requirements found in various Turkish laws and regulations restrict the free flow of data and negatively affect trade in digital services. In early 2018, the Capital Markets Board of Turkey published the "Communique on Information Systems Management," which requires publicly traded companies to keep their primary and secondary information systems, data, and infrastructure within Turkey. Turkey's 2016 "Law on the Protection of Personal Data" limits transfers of personal data out of Turkey and may require firms to store data on Turkish citizens within Turkey.

Turkey's "Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions" (or "E-Payment Law") requires information systems used by financial firms for keeping documents and records to be located within Turkey. Many U.S. firms, which depend on a globally distributed network data architecture, view these requirements as unworkable given their business models. The strict implementation of the E-Payment Law by Turkey's Banking Regulation and Supervision Agency has had a negative impact on foreign suppliers offering Internet-based payment services and has led one prominent U.S. firm to suspend its operations in Turkey.

Technology

In 2011, the Information and Communication Technologies Authority (BTK), under the Ministry of Transportation, Maritime Affairs, and Communications, imposed regulations on the use of encryption in hardware and software. Suppliers are required to provide encryption keys to state authorities before they can offer their products or services to individuals or companies within Turkey. Failure to comply can result in administrative fines and, in cases related to national security, prison sentences. The government also has blocked encrypted messaging services on several occasions in recent years.

Internet Services

Turkey's Law No. 5651 gives BTK the responsibility to enforce bans on Internet content determined by Turkish courts to be offensive. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. The Turkish government also has slowed down Internet connectivity on occasion, which hurts industry-leading U.S. technology companies.

Further, Internet service providers face potential liability under broad and vague standards for content posted by their users that is deemed blasphemous, discriminatory, or insulting. This potential liability makes it difficult for U.S. companies that depend on user-generated content to operate in Turkey.

OTHER BARRIERS

Corruption

Despite Turkey's ratification of the Organization for Economic Cooperation and Development (OECD) anti-bribery convention and passage of implementing legislation making it illegal to bribe foreign and domestic officials, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a serious problem. Some observers perceive the judicial system to be susceptible to external influence from both inside and outside the government and on occasion to be biased against foreigners. Based on anecdotal evidence, government-related corruption in the construction sector in particular appears to be worsening. Turkey ranked 81 out of 180 countries in Transparency International's 2017 Corruption Perception Index. Turmoil within Turkish government institutions, in the wake of the July 2016 attempted coup and restructuring of the government following Turkey's adoption of a presidential system in July 2018, appears to have multiplied the opportunities for public corruption, especially in government tenders that make it more difficult for foreign firms to compete fairly.

Restrictions on Pharmaceuticals Reimbursement and Official Exchange Rate for Government Purchases

U.S. pharmaceutical companies have complained that their business operations in Turkey are adversely impacted by the Turkish government's 2017 decision to restrict reimbursement for pharmaceutical products sold in Turkey and its refusal to adjust adequately the official exchange rate used for government purchases of imported pharmaceutical products.

In 2018, the government released two lists totaling approximately 200 pharmaceutical products for which the government will deny reimbursement unless they are manufactured in Turkey. Since government reimbursement covers the vast majority of pharmaceutical products sold in Turkey, U.S. firms assert that denying reimbursement would seriously undermine their ability to market their products in Turkey if they do not manufacture them locally. The government has also indicated it plans an additional three tranches of products to 'de-list' in the near future but has not specified dates.

In 2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of Turkish Lira 1.95 = Euro (€) 1.00 for government reimbursements for pharmaceutical products. The government codified this arrangement in statute and agreed in that statute to adjust the exchange rate if it went up or down by over 15 percent compared to the 2009 baseline. According to U.S. industry, the exchange rate shift against the Lira exceeded 15 percent of the baseline in 2011, resulting in an effective price discount in the Turkish market for their products of over 50 percent. Despite multiple Turkish court rulings against the government that obliged it to respect the rate adjustments provided for in the 2009 law, the government only agreed to implement the rulings in 2015; even then, the government arbitrarily chose to reimburse companies for only 70 percent of the previous year's average daily market exchange rate. The government's January 2017 pharmaceutical regulation fixes the exchange rate for reimbursement at less than half current market value. Due to this artificially low reimbursement rate, pharmaceutical companies claim they cannot bring some next-generation drugs to the Turkish market.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $1.1 billion in 2018, a 44.9 percent increase ($345 million) over 2017. U.S. goods exports to Ukraine were $2.5 billion, up 37.9 percent ($677 million) from the previous year. Corresponding U.S. imports from Ukraine were $1.4 billion, up 32.6 percent. Ukraine was the United States' 59th largest goods export market in 2018.

U.S. foreign direct investment (FDI) in Ukraine (stock) was $398 million in 2017 (latest data available), a 16.4 percent decrease from 2016.

TRADE AGREEMENTS

The United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. The TICA established the United States-Ukraine Trade and Investment Council (TIC) as a forum for discussion of bilateral trade and investment relations – to address a wide range of trade and investment issues, both broad policy issues as well as specific market access barriers. The TIC seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The TIC met most recently in Washington, D.C., on October 23, 2018. In this meeting, the delegations explored ways to eliminate trade and investment barriers in order to expand economic opportunities and achievements in both countries. Topics discussed at the TIC included specific market access barriers, Ukraine's approximation of European Union (EU) regulations, the lack of adequate and effective IPR protection and enforcement, deficiencies in rule of law, and the lack of predictability across a range of issues.

IMPORT POLICIES

Tariffs

U.S. exports are subject to Ukraine's MFN applied tariff rate. Ukraine's MFN applied tariff rate averaged 4.5 percent, 9.2 percent for agricultural products and 3.7 percent for non-agricultural goods, in 2017 (latest data available). In 2017, Ukraine's simple average WTO bound tariff rate averaged 5.8 percent for all products, 11.0 percent for agricultural products and 5.0 percent for non-agricultural products; all of Ukraine's tariff lines are bound.

Nontariff Barriers

Customs Barriers and Trade Facilitation

While Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that the State Fiscal Service assigns higher and seemingly inconsistent customs values to imports, including food, agricultural products, and pharmaceuticals, than are provided in the import documentation, despite the WTO and domestic legal requirement to base the customs value on the contract price.

Since May 2012, Ukraine has collected duties on royalties paid on imported theatrical and home entertainment products. U.S. stakeholders have claimed that the procedures for assessing the value of the royalties are burdensome and costly. Moreover, U.S. stakeholders assert that, although the Ukrainian

Supreme Court has ruled that Ukrainian customs authorities had inappropriately included royalty payments in the customs value of films and DVDs, Ukrainian Customs continues to collect duties on royalties.

In October 2018, Ukraine began implementing a law to simplify and streamline the procedures for customs clearance of goods by eliminating a number of control measures and paper documents. The state bodies that issue permits for customs clearance are now obliged to submit them electronically to the state information system "Single Window of International Trade." The law also abolished radiological monitoring, which, according to U.S. stakeholders, had been a costly and burdensome process. Under the new law, only customs officers and border guards will remain at border crossing points. The Finance Ministry of Ukraine is developing and updating the necessary regulations to implement the new law.

Ukraine ratified the WTO Trade Facilitation Agreement on December 16, 2015.

Other Market Access Barriers

Importers of U.S. products had complained for many years about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of "uniform allotment" (*i.e.*, batches identified for sampling) in a 2002 Cabinet of Ministers Decree. Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees therefore posed a significant burden on the importer. In 2018, Ukraine adopted new legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Secondary regulation governs the frequency of checks and applies risk-based world standards, but how this legislation will be implemented remains to be seen. Industry and U.S. Government officials have asked that Ukraine ensure these regulations are consistent with Ukraine's WTO obligations.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity with EU Technical Regulations and Regimes

As part of its Deep and Comprehensive Free Trade Area (DCFTA) with the EU, Ukraine is moving to approximate EU technical regulations and the EU's regulatory regime (including the EU's conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt existing EU measures that raise technical barriers to trade (TBT) concerns. For example, Ukraine is incorporating elements of the EU's Restrictions on the Use of Hazardous Substances and its Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).[17] U.S. stakeholders have expressed serious concerns that the REACH approval process for chemicals often requires producers to provide unnecessary and onerous information that is unrelated to establishing the safety of the chemical. Additionally, U.S. trade could be impacted negatively if Ukraine adopts EU regional standards as a basis for its technical regulations instead of international standards. The United States has continued to press Ukraine to ensure that as it approximates its legislation to that of the EU it does not negatively impact U.S. exports. The U.S. Government has pressed Ukraine to make full use of the WTO notification procedure to ensure new regulations and conformity assessment practices are transparent and comply with Ukraine's international obligations.

[17] See the NTE European Union Chapter Technical Barriers to Trade section for further information regarding Chemicals: Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH).

Testing Requirements

U.S. agricultural equipment manufacturers have expressed concern about burdensome testing requirements put in place in late 2017. Ukraine now requires that type-approval certificates be issued by a conformity assessment body in Ukraine, that the certificates be renewed every five years, and that the equipment be inspected every two years. U.S. industry has also expressed concern about the lack of transparency in the process. The United States continues to press Ukraine to address these concerns.

Product Labelling

U.S. exporters of non-food consumer items (such as personal care products) have expressed concern about the labeling provisions in draft amendments to the Law on Consumer Rights Protection that are not based on customary international practice. U.S. industry is concerned that the draft language creates confusion with labeling requirements contained in the more specific technical regulations. The United States continues to engage with the Ukrainian government to seek clarification.

Registration Issues

Ukraine's Ministry of Economic Development and Trade (MEDT) regulates imports of certain goods by requiring foreign exporters to register products with MEDT. Since 2017, U.S. exporters have faced significant delays in receiving registration approvals for the import of certain defense technology and agricultural machinery equipment to Ukraine. USTR raised these challenges during bilateral meetings in Washington, D.C., and in Kyiv with MEDT officials in 2018.

Sanitary and Phytosanitary Barriers

Approved Exporters List

Although Ukraine accepts shipments of U.S.-produced beef and pork pursuant to bilateral U.S.-Ukraine veterinary certificates, it allows U.S. poultry imports from only those facilities already approved to ship to the EU or that have shipped to Ukraine within the last five years. As a result of interventions by U.S. Government officials, Ukraine now accepts products from 27 poultry facilities that have exported to Ukraine in the past. However, Ukraine has not yet established the technical criteria for the inclusion of other facilities that have previously exported products to Ukraine into its List of Approved Exporters. As a result, some U.S. poultry producers cannot ship to Ukraine until each facility completes the costly and time-consuming EU approval process or is inspected by Ukrainian Veterinary Service specialists, or until the United States undergoes a country-wide food safety systems audit. Ukraine has not established procedures for individual inspections audits. The United States is working with the government of Ukraine to resolve this issue.

Food Safety Standards

Ukrainian law recognizes three categories of food safety regulations: domestic, international, and EU standards. Ukraine relies first on domestic standards but, if none exist, its regulators will use international standards. In the absence of both a specific Ukrainian and international regulation, EU standards are used. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU standards as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. The U.S. Government has encouraged Ukraine to make full use of the WTO sanitary and phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

Import Certification

Imports into Ukraine of non-processed products of animal origin (including live animals) for which no bilateral certificate has been negotiated continue to be governed by Order 71 (June 14, 2004). This Order lists numerous, product-specific requirements that do not appear to be science-based. Because the U.S. competent authorities are unable to certify to requirements that do not appear to be science-based, U.S. exports of such products are virtually shut out of the market. Ukraine has developed, and notified to the WTO, a draft regulation to replace Order 71, but has not adopted it, and market access remains curtailed. The United States continues to work with Ukrainian authorities on this issue.

Agricultural Biotechnology

U.S. industry has raised concerns about many aspects of Ukraine's biotechnology regime. For example, the regulatory system in Ukraine for genetically engineered (GE) products is still not fully developed. While Ukraine adopted biosafety legislation outlining basic principles for governing GE products, it has not yet implemented a regulatory regime for registration of GE products for cultivation or for trade of food and feed. Further, cultivation of GE products, by law, is limited to only registered agricultural biotechnology products. Because Ukraine has not yet implemented a system for the registration of GE plant varieties or animal breeds, U.S. industry has never been able to register a product. Consequently, there are no GE crops in "approved" commercial production.

In addition, only one GE veterinary drug (for rabies) has been approved for importation. In 2018, Ukraine adopted guidelines that in theory would allow for the approval of new GE feed, feed additives, and veterinary medicines for importation. To date there have been no actual registrations of such products.

In 2014, Ukraine discontinued the "GMO-free" compulsory labeling for products that do not contain GE traits. As a result, U.S. producers and exporters may choose to use a "GMO-free" label, but the absence of GE material must be confirmed according to existing regulations. Nevertheless, under Ukrainian law, if a supplier does not provide any information about the presence of GE material, a "GMO-free" label can, in fact, be used (*i.e.*, lack of information is sufficient to label the product "GMO-free").

Of additional concern are Ukraine's commitments on biotechnology under its DCFTA with the EU. Ukraine's harmonization of its biotechnology policy to conform with the EU's could result in additional barriers to market access for U.S. exports of biotechnology products.[18] The U.S. Government continues to engage with Ukrainian authorities with regard to its biotechnology regulatory system.

GOVERNMENT PROCUREMENT

Ukraine is a party to the WTO Agreement on Government Procurement. Nevertheless, government procurement of goods and services has long been associated with alleged corruption in Ukraine, creating an effective barrier to increased trade and investment in the sector. Since the introduction in 2016 of a new public electronic procurement system called ProZorro to replace the previous paper tendering process, transparency has improved and corruption reportedly has been reduced in the procurement process. In addition, since the establishment of the Central Procurement Organization in 2016, the public procurement of medicines has improved.

[18] See the NTE European Union Chapter Sanitary and Phytosanitary Barriers section for further information regarding Agricultural Biotechnology.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ukraine remained on the Priority Watch List in the annual Special 301 Report in 2018. This designation reflects the continuing need to address the inadequate protection and enforcement of IPR and remedy the related market access barriers to U.S. exports and investment.

Ukraine has taken several positive steps to improve the protection and enforcement of IPR. For example, in 2017, it enacted a law, On State Support of Cinematography, to address prominent online marketplaces facilitating piracy and counterfeiting that continue to be hosted in, or operated from, Ukraine. The 2017 law, despite limitations, was a sign of progress in the fight against online piracy in Ukraine. In addition, Ukraine has engaged in enforcement actions in the last two years aimed at combatting online piracy.

Due to concerns that Ukraine was not providing adequate and effective protection of IPR and, in particular, the unfair and nontransparent administration of collective management organizations (CMOs) in Ukraine, the United States suspended a portion of Ukraine's GSP benefits in April 2018. Ukraine subsequently adopted a law in July 2018 to reform its CMO system. While the law is an improvement, it fails to remedy many shortcomings in the previous CMO system, including concerns about the governance of CMOs, the method for calculating royalty rates, payment of royalties for cable retransmissions, risk of overlapping CMOs, and the accreditation procedures to establish a CMO.

Draft laws pertaining to patents and geographical indications (GIs) are also of concern. Industry has raised concerns with the introduction of draft patent legislation containing provisions on compulsory licensing and restrictive patentability criteria particularly. The draft legislation on GIs falls short on transparency and adequate safeguards for generic terms and prior trademarks. Finally, concerns with the widespread use of unlicensed software by the Ukrainian government remain, but a recently adopted Cabinet of Ministers resolution requiring government agencies to stop using unlicensed software by the end of 2019 appears promising. The U.S. Government continues to press Ukraine to improve all aspects of its protection and enforcement of IPR.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine. According to U.S. industry, this requirement is a significant impediment for distributors of foreign films. With respect to cable television, U.S. stakeholders have asserted that a lack of transparency and oversight has allowed cable operators to underreport the number of their subscribers, which allows the operators to underpay for the channels they carry. The United States is working with Ukraine on this issue.

INVESTMENT BARRIERS

Value Added Tax

The standard VAT rate in Ukraine is 20 percent. Although Ukraine has significantly improved its VAT refund system, several U.S. companies exporting from Ukraine continue to complain that the government still owes refund arrears from years prior to 2017. The government of Ukraine disbursed approximately $4.3 billion in VAT refunds in 2017 and approximately $4.8 billion in 2018 through its automated VAT system; nevertheless, millions of dollars in outstanding refunds remain from previous years. U.S. exporters from Ukraine have also raised concern about Ukraine's practice of "collective responsibility" under which downstream users are held accountable for VAT payments of upstream suppliers. This approach tends to put the burden for paying VAT more heavily on U.S.-owned companies in Ukraine, which tend to invest in further processed goods that are further "downstream" in the product value chain. The U.S. Government continues to urge the Ukrainian government to repay outstanding VAT arrears and to administer the program in a non-discriminatory manner.

In August 2018, Ukraine adopted a law permitting VAT refunds for specific crops, including soya and rapeseed, but only to exporters that grow the crops. This law discriminates against international trading companies, including U.S. trading companies in Ukraine, which do not grow crops in Ukraine, and for which agricultural land ownership rights in Ukraine are curtailed. This provision is in effect from September 1, 2018 to December 31, 2021 for soybeans and from January 1, 2020 to December 31, 2021 for rapeseeds. The United States has pressed the Ukrainian government to rescind this law and to treat all exporters equally.

Privatization

The State Property Fund oversees the technical aspects of the privatization process in Ukraine, while the Cabinet of Ministers handles the strategic aspects of this process. In March 2018, Ukraine passed a new privatization law that was widely welcomed as a substantial improvement over previous legislation. The new law ensures that in nearly all cases, the government will hire reputable international advisory firms to run the privatization process in a transparent manner. It also affords prospective investors the right to resort to English law in any dispute arising from their purchase of a state-owned enterprise. Despite the new law and an ambitious annual plan, the government's failure to complete a single major privatization in three years raises concern about the Ukrainian government's commitment to privatization. Moreover, Ukraine's failure to implement fair and transparent tenders that protect the rights of investors and its weak anti-corruption institutions call into question Ukraine's ability to privatize state-owned enterprises in a transparent manner. Ukraine adopted a plan in May 2018 to privatize 26 major state enterprises, and the process has begun to privatize 12 of these, but significant administrative and legal challenges remain. The United States has provided significant technical assistance to Ukraine to support an open and transparent privatization process.

Corruption

Businesses in Ukraine have long suffered from abusive investigative activities by Ukrainian law enforcement personnel and have had difficulty turning to Ukraine's court system for protection from corruption and abuse. In December 2017, Ukraine's President signed the "Business Pressure Relief Law," which requires video recording of searches and the presence of the company's attorney and prohibits the unwarranted seizure of servers and computers.

In February 2018, Ukraine established the Business Pressure Relief Commission to oversee the implementation of the Business Pressure Relief Law, review violations, and provide recommendations for complaint resolutions. The Commission revealed that some businesses were still subject to abusive searches despite fewer overall searches. As a result, Ukraine amended the Business Pressure Relief Law on October 31, 2018, to introduce personal and financial liability for the unlawful behavior of investigating officers. The United States will press the Ukrainian government to implement the law properly and transparently to help improve the protection of the rights of businesses and reduce the number of abusive practices by law enforcement bodies.

Local Content Requirements

In 2015, Ukraine eliminated the local content requirement associated with its renewable energy feed-in tariffs, but replaced it with a bonus payment conditioned on the use of local materials in the construction of renewable energy projects. Several draft laws have been introduced in 2018 to replace the feed-in-tariff support scheme with an auction system, and most include local content bonuses of some sort.

OTHER BARRIERS

Export Policies

A variety of products remain subject to licensing by MEDT prior to export. Products that require such a license include: precious metals (silver and gold) and their scrap; ozone-depleting substances; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, detergents, shaving aerosols, and deodorants; lubricants; waxes; shoe polishes; insecticides; solvents; silicone; fire extinguishers and the chemicals that fill extinguishers; refrigerators and freezers; air conditioners; humidifiers; aerosols used for self-defense; fungicides; and other selected industrial chemical products. Since May 2017, the Ukrainian government has also required an export license for anthracite coal exports because Ukrainian thermal power plants consume primarily this coal grade and the majority of domestic coal production remained in Russia-controlled territories in Ukraine.

The Ukrainian government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, and some oilseeds (in particular sunflower seed, flaxseed, and linseed). In September 2016, Ukraine increased for one year the export duty on ferrous scrap metal from 10 euros (approximately $13) to 30 euros (approximately $38) per ton, which was extended for another year in July 2017. On June 21, 2018, the Ukrainian government increased the export duty on ferrous scrap metal again from 30 euros to 42 euros (approximately $48) per ton and extended it to September 15, 2019.

Ukraine introduced a ban on the export of raw timber in 2015. On September 7, 2018, Ukraine passed legislation criminalizing the smuggling of timber and restricting domestic consumption of non-processed wood by 25 million cubic meters per year.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was $14.5 billion in 2018, a 7.7 percent decrease ($1.2 billion) over 2017. U.S. goods exports to United Arab Emirates were $19.5 billion, down 2.4 percent ($471 million) from the previous year. Corresponding U.S. imports from United Arab Emirates were $5.0 billion, up 17.3 percent. United Arab Emirates was the United States' 19th largest goods export market in 2018.

Sales of services in United Arab Emirates by majority U.S.-owned affiliates were $8.7 billion in 2016 (latest data available), while sales of services in the United States by majority United Arab Emirates-owned firms were $2.5 billion.

U.S. foreign direct investment (FDI) in United Arab Emirates (stock) was $16.8 billion in 2017 (latest data available), a 23.7 percent increase from 2016. U.S. direct investment in United Arab Emirates is led by mining, wholesale trade, and manufacturing.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), the United Arab Emirates (UAE) applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. The UAE exempts 811 items from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products. However, as of 2018, not all GCC Member States had implemented the tax. U.S. beverage producers have noted that the current tax structure both fails to address public health concerns and disadvantages U.S. products, noting that sugary juices–many of which are manufactured domestically–remain exempt from the tax. The UAE began to levy the taxes in October 2017.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State as well. The UAE began to apply the VAT in January 2018. Exports are eligible for tax reimbursements on purchases (“zero-rated”), while imports are subject to “reverse-charge VAT” at their corresponding rate. This accounting mechanism mandates that importers collect output tax on behalf of foreign companies while deducting the same amount from their tax returns. Goods and services in the following industries are also “zero-rated”: education, healthcare, initial residential sales, international passenger transport, and life insurance. In addition, the sale of airplanes, ships, trains, and services provided by companies that contract or participate in international events in the UAE are “zero-rated.” The following items are tax exempt: local passenger transport, residential leases, bank interest income, and residential real estate revenue after initial sale. VAT is collected on imports transiting the UAE and destined for other GCC countries that have begun implementing the VAT; the tax revenue is then transferred to the respective national tax authorities.

In 2018, the UAE introduced additional tax regulations. In May, the government issued Resolution 23 of 2018 that stipulates that the Ministry of Justice is responsible for supervising committees formed to resolve tax disputes; Resolution 25 of 2018 clarified the application of VAT to gold, silver, and diamonds; and Resolution number 26 of 2018 "zero-rated" the services provided at exhibitions and conferences. Beginning in June, Abu Dhabi imposed an additional 30 percent fee on retail sales of alcoholic beverages in the emirate. In July, the UAE Cabinet approved a VAT refund for tourists, which was expected to enter into force in November. According to the UAE Federal Tax Authority, a refund will be available for non-UAE residents for purchases over US$68. The system would be initially available at Abu Dhabi, Dubai and Sharjah airports, but will eventually be expanded to 12 exit points, including the land border crossings and ports.

Nontariff Barriers

Import Bans and Restrictions

The UAE imposes import controls on a number of products, including alcoholic beverages and products, industrial alcohol-denatured, methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, printed matter such as magazines and videos, photographic material, fireworks, firearms and ammunition, explosives, drugs, and agricultural pesticides.

Import Licensing

Only UAE-registered companies, which are required to have at least 51 percent UAE ownership, are able to obtain licenses to engage in importation. This licensing requirement does not apply to goods imported into free zones. Importation of some goods for personal consumption does not require an import license.

Documentation Requirements

The UAE requires that documentation for all non-agricultural imported products be authenticated by the UAE embassy in the United States, including the delivery order from the shipping or line agent, original supplier commercial invoice, certificate of origin, and packing list. This consularization requirement is burdensome and costly to U.S. exporters.

Customs Barriers and Trade Facilitation

The UAE ratified the WTO Trade Facilitation Agreement (TFA) in April 2016. The UAE has availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. The UAE has submitted its Category A notification, but has not notified the remaining commitments. The UAE should have notified its definitive dates for Category B commitments by February 2018. Additionally, the UAE notified three of the four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

Despite the obligation under the WTO Customs Valuation Agreement, the UAE has not notified its national legislation or Checklist of Issues to the WTO Committee on Customs Valuation.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In 2018, the UAE implemented technical regulations for a range of products, including vehicle spare parts, small series production vehicles, tobacco and tobacco products, and terrestrial radio receivers, in addition to 22 new food, oil, gas, chemical, and cosmetic product regulations. In 2018, the UAE also issued technical requirements for motor vehicle "electronic call" systems.

In September 2018, the Emirates Authority for Standardization and Metrology (ESMA) announced a new vehicle safety system requiring that all auto parts entering the UAE contain an ESMA quality mark, part of a broader set of regulations governing the sale and use of automotive spare parts. While the regulation initially only applies to new parts entering the UAE market, all parts not in compliance must be removed from the domestic market by September 2019.

Halal Regulations

In 2017, the UAE Ministry of Climate Change and Environment (MCCE) transitioned supervision of halal certification to ESMA. As a part of this transition, all existing certifiers were required to complete a lengthy re-accreditation process to continue certifying halal products destined for the UAE. U.S. food producers have expressed concern regarding ESMA's lack of transparency in this registration process, coupled with inconsistent application of the Gulf Standards Organization (GSO) halal standard, as these issues may affect their ability to export halal products to the UAE.

Restrictions on Hazardous Substances (RoHS) – Electrical Goods

In March 2018, GCC Member States notified to the WTO a draft measure that would, among other things, require pre-market testing for restricted materials in electrical goods using accredited labs. It would also require each type of good to be registered annually, including submission of sample products prior to receiving approval for use in the GCC. The United States raised concerns that pre-market testing could have a large negative impact on the U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as the practice differs from common practice for RoHS regulations, which typically allow self-declaration of conformity. The United States also raised concerns regarding an earlier UAE RoHS regulation and whether it would be replaced by the GCC RoHS regulation when implemented.

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment and Marking

In December 2013, GCC Member States issued regulations on the GCC Regional Conformity Assessment Scheme and GCC "G" mark in an effort to "unify conformity marking and facilitate the control process of the common market for the GCC Members, and to clarify requirements of manufacturers." U.S. and GCC officials continue to discuss concerns about consistency of interpretation and implementation of these regulations across all six GCC Member States, as well as the relationship between national conformity assessment requirements and the GCC regulations, with the objective of avoiding inconsistencies or unnecessary duplication.

Cosmetics and Personal Care Products

In April 2017, GCC Member States notified WTO Members of a new GSO proposed regulatory and conformity assessment scheme that will govern market authorization for cosmetics and personal care products. The United States raised concerns that neither the GCC nor its Member States have indicated whether the regional scheme will replace existing national-level registration requirements or will function in addition to national programs, potentially introducing a scenario whereby Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and U.S. industry have also raised concerns regarding the measure's inconsistency with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

Juice and Dairy Drinks

In 2004, the UAE introduced a mandatory regulatory program, the Emirates Conformity Assessment Scheme (ECAS) under which ESMA monitors industry compliance with UAE standards in order for goods (both imported and domestic) to be sold in the country. Initially, ECAS only applied to items such as textiles and building materials. However, in June 2018, without notification, the UAE expanded the scope of ECAS to include agricultural products, such as dairy and juice products. The application of ECAS to these items creates a significant trade barrier for U.S. exporters and producers and duplicates the regulatory system already overseen by MCCE.

Live Cattle

The United States maintains a transparent and stringent surveillance program for bovine spongiform encephalopathy (BSE) that ensures that the safety of U.S. beef exports exceeds requirements by the World Organization for Animal Health (OIE). Despite OIE designation as a negligible risk country since 2013, the UAE has not lifted its ban on imports of U.S. live cattle following the 2004 detection of classical BSE in the United States. The United States continues to request the UAE to remove this restriction and allow for the importation of U.S. live cattle.

Food Additives

In 2018, based on ESMA's misinterpretation of UAE Food Additives Standard No. UAE.S 192: 2016, the UAE Food Safety Committee banned the use of tartrazine (yellow # 5 or E102), a widely used food additive, in any imported or locally manufactured products. The UAE intends to implement the ban in September 2019. Tartrazine is approved by the Codex Alimentarius Commission (Codex) for use in flavored milk drinks, fish products, and soups, and is under review by Codex for use in a variety of other food categories. To date, the UAE has not provided scientific evidence justifying the ban. If implemented, this ban will cause negative economic consequences to the U.S. food and beverage exports.

Certification

In November 2016, the GCC announced that in 2017 it would implement a "GCC Guide for Control on Imported Foods" (the Guide). The United States has raised concerns about the Guide, particularly regarding the GCC's lack of a scientific explanation for requiring certain health certificate statements, some of which may not follow relevant guidelines established by the Codex, the International Plant Protection Convention, or the World Health Organization for Animal Health (OIE). As of December 2017, GCC Member States have indefinitely suspended implementation of the "GCC Guide for Control on Imported Foods," which poses risks to trade in a wide range of agricultural products.

GOVERNMENT PROCUREMENT

U.S. companies continue to raise concerns regarding the general lack of transparency in the UAE's government procurement process as well as lengthy delays and burdensome procedures to receive payment.

The UAE provides a 10 percent set-aside for domestic small and medium-sized enterprises (SMEs) and a 10 percent price preference for GCC goods in federal government procurement. Companies must have at least 51 percent UAE ownership in order to participate in federal government procurement, except for major projects or defense contracts in which domestic companies are not able to provide the necessary goods or services. The Dubai government also provides a substantial set-aside for SMEs and requires that all Dubai government entities and companies in which the government has at least 25 percent ownership provide preferences that include a fee exemption and 10 percent set-aside, discounted rent of 5 percent for entities in commercial centers, and a 5 percent price preference. In 2018, the Dubai government announced that 20 percent of government procurement would be sourced from SMEs.

Foreign defense contractors continue to raise concerns regarding the complexity of the UAE's "Tawazun Economic Program." This program requires those with contracts valued more than $10 million over a five-year period to establish commercially viable joint venture projects with UAE companies that yield profits equivalent to 60 percent of the contract value within a seven-year period. Certain projects may be granted a grace period depending on the required lead-time as a result of the complexity, sophistication or infrastructure requirements. Monetary obligations are assessed on the expected growth cycle of a project at the end of each year of the program. Foreign defense firms must submit a bank guarantee equivalent to 8.5 percent of overall outstanding obligations.

In September 2017, the Abu Dhabi National Oil Company (ADNOC) implemented an In-Country Value Program (ICV), requiring that suppliers provide an ICV certificate demonstrating their plans for local content and hiring as part of their bids. ADNOC considers ICV score in awarding contracts. U.S. industry has raised concerns that the ICV system is opaque and that ICV criteria change frequently. The ADNOC CEO suggested that discussions were ongoing to expand the ICV program into other sectors and potentially other emirates.

The UAE is neither a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2018, the UAE was listed as a Watch List country in the annual Special 301 Report in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. In 2017, the UAE Ministry of Health and Ministry of Economy granted marketing approvals to domestic companies to produce generic versions of pharmaceutical products still under patent protection in the United States, claiming that previous government measures providing patent protection for such products were no longer valid. The UAE government has failed to provide clarifications or assurances since those approvals, and this lack of predictability and transparency has led to instability and confusion among stakeholders in the innovative pharmaceutical industry.

In addition, significant copyright piracy and trademark infringement concerns remain. Officials in the Emirates of Dubai, Sharjah, Ras al Khaimah, and Ajman continue to allow the re-export and transshipment of counterfeit products, rather than seizing and destroying the goods, even though federal UAE officials have asserted that the 2014 law on commercial fraud requires such destruction. U.S. right holders also continue to raise concerns over the lack of intellectual property rights (IPR) prosecutions; a lack of government staff solely dedicated to counterfeit enforcement; a lack of enforcement action without specific, written complaints from right holders; and a lack of transparency and available information related to UAE raids and seizures of pirated and counterfeit goods. U.S. companies also raise concerns over high trademark filing fees in the UAE, which are the highest in the world and are considered cost-prohibitive to protecting trademarks there. This is an especially serious trade barrier for SMEs, startups, and entrepreneurs, which run a high risk of having their brands copied and registered in the UAE by wealthier entities that can afford the filing fees.

The UAE also has yet to grant the necessary operating licenses to establish collective management organizations to facilitate copyright licensing and royalty payments, which has been a longstanding concern.

As GCC Member States explore further harmonization of their IP regimes, the United States will continue to engage with GCC institutions and the Member States and provide technical cooperation and capacity building programs on IP best practices, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Distributor Services

Federal Law No. 14 of 1988 governs registered commercial agents and Federal Laws No. 18 of 1993 and No. 5 of 1985 govern unregistered commercial agencies. These laws require non-GCC foreign companies to distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals or GCC citizens. The UAE government allows foreign companies to sell some products (including livestock, dairy products, fats and oils, honey, eggs, fruit juices, salt, yeast, animal feed, detergents, and hygiene products) without a local agent, in order to stabilize the prices of these products. Foreign companies are required to maintain an exclusive commercial agent and may not register another commercial agent unless either the previous agent or the Commercial Agencies Committee agrees to termination of the agreement or unless there is judicial action to cancel the agreement.

Insurance Services

Foreign insurance companies are allowed to operate in the UAE only as branches. Cabinet Resolution No. 16 of May 2017 allows for an increase from 25 percent to 49 percent foreign equity in domestic insurance companies.

In April 2018, the UAE issued Federal Law No. 3 of 2018, which established the Insurance Authority (IA), a federal insurance regulatory body. The law stipulates that insurance companies operating in the UAE may not combine insurance business of “persons and funds accumulation” and “property and liability.” In May 2018, the Insurance Authority issued Decision No. 14 of 2018, establishing financial solvency requirements for the branches of foreign insurance companies in the UAE that provide a type of Islamic insurance (Takaful). The Decision stipulates that all branches of foreign insurance companies must disclose the value of the net assets of their parent companies to determine risk exposure and must provide the IA with copies of their solvency margin calculations on an annual basis. Further, a foreign company branch in the UAE must report to the IA any deficiency in the financial solvency of its parent company and the extent to which the financial situation of the parent company has affected the financial solvency of the branch in the UAE. The law also stipulates that all branches of foreign insurance companies operating in the UAE must maintain sufficient admissible assets to fulfil their liabilities in the UAE at all times.

The Emirate of Abu Dhabi limits insurance coverage for infrastructure, construction projects, and subsidiaries of the Abu Dhabi National Oil Company to Abu Dhabi-based insurance companies.

Telecommunications Services

The UAE government maintains majority ownership in Etisalat and du–the only telecommunications companies, Internet service providers, and mobile phone operators in the UAE. Since June 2015, the UAE has allowed foreign investors to own up to 20 percent of the largest telecommunications operator, Etisalat, though actual foreign ownership is only 4.6 percent. For du, though foreign equity is allowed up to 100 percent, foreign ownership currently accounts for less than one percent.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Etisalat and du, the UAE's two majority government-owned telecommunications services providers, block access to most "over-the-top" (OTT) Internet-based communications services, such Voice over Internet Protocol (VoIP) services, video communication services, and messaging services. UAE regulators have declined to intervene, restricting provision of these services to national suppliers. This constitutes a serious market access barrier for certain U.S. Internet services.

The UAE maintains measures that discriminate against app-based transportation services, including an outright ban on such services in certain emirates. Where they are not banned, these services are subject to a requirement that they charge as much as 30 percent more than taxis, and drivers must be licensed under onerous for-hire vehicle regulations. Federal Law No. 9 of 2011 restricts licenses for all commercial transport vehicles to UAE citizens. In Dubai, any for-hire transportation company must own at least 20 vehicles, 90 percent of which must have a value greater than $50,000, effectively undermining the business model of certain app-based transportation services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The UAE restricts foreign ownership of land and limits foreign investment through restrictive agency, sponsorship, and distribution requirements. With rare exceptions, or unless established in free zones, companies in the UAE with non-GCC ownership are required to have a minimum of 51 percent UAE national ownership, although profits and management control can be apportioned differently and often are negotiated at fixed amounts. Branch offices of non-GCC foreign companies are required to have a commercial agent with 100 percent UAE national ownership, unless the foreign company has established its office pursuant to an agreement with the federal or an emirate-level government.

In April 2016, the UAE clarified Federal Law No. 4 of 2012, which defines "a dominant establishment" and prohibits these entities from engaging in price fixing, predatory pricing, discrimination between customers with similar contracts without justification, or forcing customers to refrain from dealing with competing entities. However, the resolution exempts establishments at least 50 percent owned by federal or local governments. Generally, state-owned enterprises are perceived to be favored in legal disputes with foreign companies brought before the local judiciary.

Ministry of Economy Resolution No. 3 of January 2017 updated the fees charged for various services, with those applicable to foreign companies being 4 to 12 times higher than the fees on national companies. The Emirate of Ajman issued decree No. 12 of July 2017 reorganizing real estate brokerage offices, under which the Ajman Department of Economic Development may not issue a new license or renew or modify a valid license for a real estate brokerage office unless the applicant is a UAE citizen or GCC national.

In May, the UAE government announced plans to relax its foreign ownership law by the end of 2018, though further detail about which industries might be affected is scheduled for release in early 2019. Abu Dhabi announced the issuance of dual licenses for companies in free zones to operate outside the free zones and to participate in government tenders, should they locate in certain free zones. In addition, in 2018, the Emirate of Sharjah announced that foreigners may purchase property in the emirate without a UAE residency visa on a 100-year renewable land lease basis.

Foreign investors continue to raise concerns regarding the resolution of investment disputes and the difficulty of collecting arbitration awards. Among other issues, foreign investors are concerned that pursuing arbitration in disputes with a UAE company can often jeopardize their business activities in the country.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $39.5 billion in 2018, a 3.1 percent increase ($1.2 billion) over 2017. U.S. goods exports to Vietnam were $9.7 billion, up 19.1 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Vietnam were $49.2 billion, up 5.9 percent. Vietnam was the United States' 30th largest goods export market in 2018.

U.S. exports of services to Vietnam were an estimated $2.3 billion in 2017 (latest data available) and U.S. imports were $1.3 billion. Sales of services in Vietnam by majority U.S.-owned affiliates were $592 million in 2016 (latest data available), while sales of services in the United States by majority Vietnam-owned firms were $1 million.

U.S. foreign direct investment (FDI) in Vietnam (stock) was $2.0 billion in 2017 (latest data available), a 2.8 percent increase from 2016.

TRADE AGREEMENTS

Vietnam is party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Vietnam, also has preferential trade agreements with Australia, China, India, Japan, Korea, and New Zealand. In November 2017, Vietnam and the other ASEAN countries signed a free trade agreement (FTA) with Hong Kong, but it is not yet in force. Vietnam also has bilateral FTAs with Chile, the Eurasian Customs Union, Japan, and Korea. Vietnam’s FTA with the European Union (EU) has been signed, but not yet been approved by Vietnam’s National Assembly or the EU Parliament. Vietnam is participating in the Regional Comprehensive Economic Partnership negotiations, which include all of the ASEAN countries plus Australia, China, India, Japan, Korea, and New Zealand. In November, Vietnam ratified the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Vietnam is negotiating FTAs with other countries, including Israel.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Vietnam has bound all of its tariff lines at the World Trade Organization (WTO), and in 2017 (latest data available) Vietnam’s Most Favored Nation (MFN) applied tariff rate averaged 9.6 percent. Vietnam’s Law on Tariffs (No. 107) with a new applied tariff schedule (Decree 122/2016/ND-CP) has been in effect since September 1, 2016. Inputs imported for software production, medical equipment production, shipbuilding, and petroleum activities that cannot be produced domestically are eligible for tariff exemptions. Tariff exemptions and refunds are also applied to the following: animal breeds, plant varieties, fertilizers, and plant protection drugs that are not produced domestically; imported machinery, inputs, and spare parts used for money printing; and goods imported or exported for the purpose of environmental protection. Per Decree 114/2015/ND-CP, tariffs are applied on goods traded between Vietnam’s customs territory and export processing zones and economic zones, but goods traded among export processing zones and economic zones are exempt from tariffs.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In addition, in recent years, Vietnam has increased

MFN applied tariff rates on a number of products, although rates for those products remain below Vietnam's WTO bound levels. Products affected by these tariff adjustments include sweeteners (such as fructose and glucose), shelled walnuts, ketchup and other tomato sauces, inkjet printers, soda ash, and stainless steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

As of January 1, 2018, Decree 125 increased the number of MFN duty-free tariff lines from 3,133 to 3,282 (by 149 lines). The decree also doubled tariff rates for used passenger vehicles. In addition, Decree 125 reduced tariff rates to zero percent for automotive parts that cannot be produced domestically (Harmonized System code 98.49). The reduction applies from 2018 to 2022. This preferential tariff program is available only to companies that meet certain conditions set out in Decree 116 regarding car production and importation. As of January 1, 2018, Decision 45/2017/ND-CP established a non-MFN tariff of five percent for 3,282 lines of listed goods. For goods not listed in Decision 45 and not subject to MFN duty-free tariff, the tariff is 150 percent of the MFN tariff.

Taxes

Vietnam's Law 106 of 2016 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

Nontariff Barriers

Import Bans and Restrictions

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, and certain cultural products. Ministry of Science and Technology Circular 23/2015/TT-BKHCN on the importation of used machinery, equipment, and technology rolled back some restrictions on the importation of remanufactured equipment and simplifies the documentation needed to establish the year of manufacture of used equipment.

Ministry of Industry and Trade (MOIT) Circular 05/2014 set out a list of items subject to permanent and temporary bans on importation for re-export under Directive 23 of 2012, including chemicals, plastics and plastic waste, and certain types of machinery and equipment. In addition, Ministry of Construction (MOC) Circular 25 prohibits the importation of asbestos of the amphibole group.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Decision 18 of 2016 eases import prohibitions on some used IT products if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing or data processing for foreign partners; or (4) re-imported after overseas repairs under warranty. The decision also covers refurbished goods and components out of production imported to replace or repair those being used domestically.

Import Licensing

Ministry of Health issued Circular 30 of 2015 provides that an import license is required for 25 diagnostic devices and 24 treatment devices.

Ministry of Information and Communications (MIC) Circular 18/2014/TT-BTTTT provides that imports of mobile phones, radio transmitters, and radio transmitter-receivers require an import permit. According to the circular, which went into effect in January 2015, an import permit will be issued within seven working days after an importer submits an application to MIC.

Government Decree No. 58/2016/ND-CP (Decree 58) requires an import license for some products with encryption (cryptography) functions. U.S. stakeholders have reported that Vietnam Customs has blocked imports of certain network equipment products containing encryption that did not previously require an import license. The import license requirement seems to have broadened to cover products where encryption is an "important" function, rather than the "core" function standard reflected in Decree 58. The U.S. Government continues to engage the government of Vietnam on clarifying the scope and coverage of Decree 58.

Customs Barriers and Trade Facilitation

Vietnam has implemented the WTO Customs Valuation Agreement, but importers have reported concerns with the use of reference prices by Vietnam, as well as other customs issues. The United States will continue to work with U.S. companies and Vietnam on implementation of the Customs Valuation Agreement.

Vietnam's Law on Customs provides a legal framework for the National Single Window and institutes a number of improvements, including increased electronic filing of customs forms. It also allows for more self-certification by traders and for an expanded advance rulings system, which includes rulings on classification, origin, and customs valuation. Vietnam issued Decree 59/2018 in April 2018 to amend and supplement Decree 08/2015 on Customs Procedures and Supervision, by allowing Authorized Economic Operators to be exempted from customs post-clearance audits, except when there is an indication of a violation.

On December 15, 2015, Vietnam ratified the WTO Trade Facilitation Agreement (TFA) and availed itself of the flexibilities for developing countries in Section II of the TFA, which allows for self-designation of capacity building needs and dates of implementation. Vietnam notified two of four Section I transparency provisions under Category A, but has yet to provide the relevant information, which was due to the WTO Secretariat by entry into force of the Agreement, February 22, 2017.

Trading Rights

Companies are allowed to import all goods except for a limited number of products for which imports are reserved for state trading enterprises. These products include: cigars and cigarettes, materials for gold bar production, fireworks, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions). Vietnamese law provides that foreign-invested enterprises with export trading licenses may buy agricultural products only from local traders.

Price Registration and Stabilization

Under Vietnam's Price Law, the Ministry of Finance (MOF) has the authority to apply price controls on a set list of products, including petroleum products, electricity, liquefied petroleum gas, nitrogen fertilizers, pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

MOIT Circular 08 of 2017 gives processors, traders, and importers of milk and some supplementary products the right to determine retail prices, but requiring them to declare their retail prices to competent authorities. They also are required to declare their retail prices in advance when increasing prices by five percent or more on dairy products. Milk processors, traders, and importers are permitted to declare various retail prices to suit conditions in different regions. However, during periods of so-called "price stabilization," prices are subject to a registration process under which MOIT may request a justification for price increases and delay the increases if the response is deemed inadequate. In September 2018, the Ministry of Health (MOH) released Circular 22/2018/TT-BYT specifying the list of supplementary products subject to price declaration. The United States has engaged extensively with Vietnam on this issue since 2014, and continues to monitor the situation in consultation with U.S. industry.

Other Nontariff Barriers

U.S. stakeholders continue to express concerns about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Decree 54 of 2017 permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical community welcomed this step but continues to have concerns about warehousing, distribution, and licensing requirements, that Vietnam imposed as well as the lack of transition period for companies to establish a foreign invested entity.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Cars and Vehicles

Since January 1, 2018, Decree 116/2017/ND-CP further tightened conditions for automotive manufacture, assembly, importation, and service, and for automobile warranties. Under the decree, importers must submit lot-by-lot emission and safety certificates issued by the Vietnam Registrar (VR). Industry stakeholders indicate that lot-by-lot emission and safety tests are extremely costly and difficult to implement. In January 2018, Vietnam issued Circular 03/2018/TT-BGTVT guiding the implementation of Decree 116 with additional requirements on Vehicle Type Approvals (VTAs) for car parts (tire, side mirror, headlight, and windshield) used to assemble imported cars. The United States is concerned by the trade disruptions caused by the Decree and continues to work with Vietnam to find solutions for U.S. exporters. In September 2018, the Prime Minister directed the Ministry of Transport to revise Circular 03 provisions on lot-by-lot testing. The United States has engaged extensively with Vietnam on this issue and continues to monitor the situation in consultation with U.S. industry.

Since the beginning of 2018, under Decision 04/2017/QD-TTg, Vietnam requires all vehicles with fewer than nine seats to have energy labels and to conform to minimum energy efficiency standards.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Vietnam's agricultural biotechnology approval process is slow and non-transparent. Industry sources have reported significant delays in Vietnam's approval process for genetically engineered (GE) crops. While Ministry of Agriculture and Rural Development (MARD) approved two agricultural biotechnology products for food and feed use in October 2018, 26 products still remain in the queue awaiting approval. Vietnam remains a major importer of key biotechnology plant products such as corn, distiller's dried grains with solubles (DDGS), soybeans for animal feed production, and cotton for the textile industry. The United States continues to press Vietnam to avoid unnecessary delays in the biotechnology approval process.

Animal Health

At the end of 2017, MARD began drafting a Livestock Production Law to regulate livestock breeding and production. Despite numerous interventions and formal comments on the draft of the law to the WTO Committee on Sanitary and Phytosanitary Measures in October 2018, Vietnam passed the law in late November 2018. The final version of the Livestock Production Law includes language to ban imports of livestock products produced using chemicals prohibited for domestic use. MARD officials assert that because there are no banned substances specifically named in the law, that there will be no impact on trade. The law goes into effect on January 1, 2020. MARD plans to draft the supporting decree and regulations during 2018. The United States continues to monitor the situation closely and to urge Vietnam to refrain from trade-restrictive actions.

Food Safety

On February 2, 2018, Vietnam adopted Decree 15 on the enforcement of the Food Safety Law (replacing the original Law known as Decree 38, which was issued in 2012). Decree 15 provides new guidance on registrations, announcements, certificates, labels, advertisements, working conditions, origins of food and food additives, and jurisdiction for food safety issues. Although the Decree simplifies many of the import procedures for food and agricultural products, uncertainty remains on many of its aspects. Different Vietnamese government ministries, and even departments within MARD, appear to contradict each other regarding the interpretation of the Decree. For example, several MARD departments have different definitions for which products can be considered a processed food. Additionally, although Decree 15 permits simplified sampling to be performed for imports meeting certain safety requirements, discrepancies within the Vietnamese government appear to prohibit such allowances, contradicting the spirit of the Decree. Another area of concern is the transfer of authority to propose maximum residue limits (MRLs) for food safety from Vietnam's Ministry of Health (MOH) to MARD, although MOH will continue to officially authorize MRLs. As a result, the United States does not yet know if the new Decree will resolve outstanding U.S. concerns, primarily related to uneven enforcement and lack of transparency, on the original Food Safety Law. Despite requests by the United States and other trading partners, Vietnam has refused to notify the Decree to the WTO to allow for comments on the Decree. The United States will continue to monitor developments of this new regulation.

MARD Registration of Livestock and Seafood Establishments

In February 2011, Vietnam implemented Circular 25, which requires U.S. meat, poultry, and fishery establishments to submit a questionnaire for review that must be approved by the National Agro-Forestry-Fisheries Quality Assurance Department (NAFIQAD) in order to be eligible to export to Vietnam. The United States agreed to this system with the understanding that questionnaires would be accepted and reviewed by Vietnam on a rolling basis, and that newly eligible companies would be identified as eligible to export on a list posted by Vietnam's competent regulatory authority and updated on a monthly basis. On July 18, 2017, as part of a ministry reorganization, MARD transferred responsibility for approval of establishments from NAFIQAD to the Department of Animal Health (DAH). Starting in December 2017, DAH began responding to applicants with requests to provide extensive additional information, often outside the scope of the Circular 25 requirements. DAH's actions have caused a major slowdown in the registration of new facilities, creating a significant backlog of applications still waiting approval. In May 2018, Vietnam notified the WTO Sanitary and Phytosanitary (SPS) Committee that provisions of Decree 15 had replaced Circular 25 and would maintain the registration requirement. In September 2018, the United States, along with Vietnam's other trading partners, met with MARD officials to note concern on the lack of clarity with DAH's review process under Decree 15. During this meeting, DAH indicated that it was preparing new guidelines to replace Circular 25, but stated that it would not notify these to the WTO SPS committee for comments. Additionally, DAH officials continue to refuse U.S. and other trading partners' requests to follow NAFIQAD's previous coordination of this program and publish a clear and detailed list of requirements that will help facilities provide all required information in their initial application. The United States is concerned about this lack of clarity in DAH's review process and will continue to seek improvements to the system for reviewing and approving new facilities.

Offal Products

In September 2013, MARD announced the lifting of Vietnam's ban on the importation of so-called "white offal," such as beef and pork stomach and intestines, and poultry gizzards. In February 2014, Vietnam reached an agreement with the United States on the terms and conditions necessary to resume trade in white offal products, pending registration of individual U.S. beef, pork, and poultry facilities used to produce white offal products for sale in Vietnam. Following a November 2014 audit that MARD conducted of the U.S. food safety inspection system for meat and poultry, MARD continued to assert that white offal was high risk. In December 2014, MARD informed the United States that it would stop approving new U.S. facilities to export certain types of white offal to Vietnam until it received a U.S. report on corrective measures based on Vietnam's recommendations from the audit. Since that time, the United States has provided extensive information to Vietnam demonstrating the safety of U.S. white offal. The United States has continued to raise white offal with Vietnam at the technical and political levels, including during TIFA meetings in 2017 and 2018.

During Prime Minister Phuc's visit to Washington in May 2017, Vietnam orally agreed to receive applications from more U.S. establishments seeking approval to sell white offal in Vietnam. Vietnam also agreed to work closely with U.S. establishments to resolve any questions on pending white offal applications. However, Vietnam has yet to act on white offal applications from U.S. establishments according to the May 2017 understanding, or to rescind officially Vietnam's ban on imports of white offal from anywhere in the United States. Meanwhile, MARD subsequently agreed to a follow-up systems-audit to review a subset of U.S. establishments that have registered to sell white offal in Vietnam. Depending on the results of that audit, Vietnam would approve other pending and subsequent facilities through a document review. USDA is working with industry and Vietnam to schedule that audit and find a way to resolve this issue.

Products of Plant Origin

In January 2015, Vietnam implemented a new Plant Health Law and implementing decrees updating its regulatory regime in the areas of plant health quarantine, pesticide regulation, and import and export of plant origin products. These measures included Circular 30/2014/TT-BNNPTNT, which contains a list of articles for which pest risk assessments (PRAs) must be provided before the article can be imported into Vietnam.

Under this circular, MARD initially gave the United States a six-month deadline to submit hundreds of PRAs on a variety of traditionally traded commodities. Since the MARD directive was issued, the United States submitted PRA information for a range of commodities, including citrus. MARD disputes the fact that U.S. citrus was traditionally traded and is not issuing import permits for U.S. citrus despite agreeing to do so after receiving the PRA information. The United States continues to press MARD to resolve this issue expeditiously.

In 2015, MARD also issued a decision (No. 2515/2015) that subjects a number of products to plant quarantine inspection upon importation into Vietnam and requires a phytosanitary certificate from the exporting country to accompany any shipment of those products. The list of products subject to these requirements includes many pre-packaged, consumer-oriented, or highly processed foods of plant origin, such as bulk sweetened dried cranberries, frozen peas, frozen sweet corn, and raisins, for which such certificates are not normally issued nor required. The United States continues to discuss these requirements with Vietnam.

In September 2018, MARD issued a notice that imported grain found contaminated with Canada Thistle (Circium arvense) would be re-exported without the possibility of post entry conditioning or processing. The United States is currently engaging Vietnam to resolve this issue to ensure the continuance of U.S. grain and soybean exports to Vietnam.

Veterinary Drugs

In September 2016, Vietnam notified to the WTO the MOH's draft amendment to Circular 24 on maximum residue limits (MRLs) for Veterinary Drugs in Foods. The measure proposed to ban certain drugs that previously were permitted in accordance with MRLs set by Codex Alimentarius Commission (Codex). The United States submitted comments to the WTO SPS Committee in October 2016. Following bilateral discussions, Vietnam initially agreed to modify the draft amendment to harmonize with Codex MRLs. However, Vietnam changed course in March 2017 when it introduced a measure that would have banned many of the same veterinary drugs as would have been banned in the September 2016 draft amendment to Circular 24.

In a May 2017 Joint Statement between Vietnam's Prime Minister and President Trump, the two countries announced an understanding on the issue. Based on this understanding and subsequent assurances, Vietnam agreed that it would not adopt any changes to the existing Codex-consistent MRLs that could adversely affect imports of U.S. animal products. The MOH formally announced in November 2018 that, following consultations with MARD, it would "temporarily" suspend the draft amendment to Circular 24. The United States will continue to monitor this progress until the MOH permanently removes the draft measure.

GOVERNMENT PROCUREMENT

Vietnam's 2013 Law on Procurement provides the basic framework for Vietnamese government procurement and generally promotes the purchase of domestic goods or services in government procurement when they are available. U.S. exporters do not enjoy any guaranteed access to Vietnamese government procurement.

Vietnam is not a party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Special 301 Watch List in 2018. Online piracy and sales of counterfeit goods over the Internet and in physical markets continue to be a concern. Additionally, enforcement of intellectual property rights (IPR) continues to be a challenge. Vietnam relies on administrative actions and penalties to enforce IPR, rather than other mechanisms that have a greater deterrent effect. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to discuss these issues with Vietnam.

SERVICES BARRIERS

Audiovisual Services

Regulations for the pay-television industry enacted in March 2016 require that foreign channels on pay-television services account for no more than 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-television providers use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Decision 18a/2013/QD-TTG removed previous requirements for news channels to translate their broadcasts and provide a summary of the content in Vietnamese in advance of airing, but still requires foreign content providers to secure the services of a local editing company for post-production work (including translation, content review, and payment of a placement fee) in order for advertisements to be approved for placement in a Vietnamese broadcast.

In July 2018, Vietnam released draft revisions to Decree 06/2016/ND-CP on the Management, Provision and Use of Radio and Television Services, which would require that online video-on-demand services' program offerings consist of at least 30 percent domestic programs.

Telecommunications Services

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. For instance, foreign ownership in suppliers of closed-user networks is permitted up to 70 percent, while foreign ownership in suppliers of facility-based basic services is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for suppliers of non-facilities-based public telecommunications services. Facilities-based operators are required to be majority-State-owned firms, limiting the pool of potential joint venture partners.

In June 2017, the MIC cancelled Circular 1469/CVT-GCKM, a regulation that set an artificially high roaming rate for U.S. and other foreign operators. Since cancellation of the regulation, U.S. companies have negotiated commercially competitive rates with Vietnamese operators.

Distribution Services

Foreign investors who seek to open additional retail establishments beyond the first store in Vietnam's retail sector are subject to an economic needs test, which is evaluated by the local authorities and approved by MOIT. In January 2018, MOIT issued Decree 09/2018/ND-CP, which provides additional details on the application of the economic needs test. The criteria include a market analysis, impact assessment of a new retail outlet, and contributions to socio-economic development. The only companies exempt from the economic needs test requirement are small- and medium-sized retail outlets (less than 500 square meters) located in shopping malls.

Tax Withholding by Local Service Providers

MOF Circular 103 of 2014 requires local entities to withhold taxes of up to two percent when they provide many services to foreign companies. Previously, withholdings were only required for revenue-generating services, but the withholding requirement now applies even to services that are generally tax-deductible as business expenses for local businesses, such as advertising and after-sale warranty services.

Financial Services

Foreign investors may set up 100 percent foreign-owned bank subsidiaries, or may take ownership interests in domestic "joint stock" banks (commercial banks with any amount of private ownership) or "joint venture" banks (banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutions and individual investors in domestic "joint stock" banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined by Vietnam as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese bank) is limited to 20 percent. Foreign equity in "joint venture" banks is limited to 49 percent. Foreign bank branches and representative offices of foreign bank and credit institutions continue to face geographic network restrictions that joint stock banks or joint venture banks do not face, including being limited to one office per province. Wholly foreign-owned bank branches in Vietnam are treated as separate entities from their parent company for regulatory purposes, and it is not clear if consolidated governance and consolidated reporting per international practices are permitted. In addition, the capital base for calculating the lending limits for foreign bank branches is determined at the local branch level, not on the parent bank's capital, disadvantaging international bank branches against local banks, whose lending limit is calculated based on their total bank capital.

Electronic Payment Services

Vietnam has sought to promote the development of a local electronic payments industry. In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Vietnam then issued Circular 19/2016/TT-NHNN, mandating that all domestic retail credit and debit transactions be processed through NAPAS starting January 2018. Such a requirement prohibits foreign electronic payment services suppliers from supplying the service fully on a cross-border basis (*i.e.*, without involving NAPAS, a competing service supplier). The State Bank of Vietnam extended the implementation period of Circular 19 until January 2019 and again until January 2020, which may allow for further amendments to address aspects of the Circular that put foreign suppliers at a competitive disadvantage. Vietnam has also issued a draft measure relating to cashless payments that amplifies concerns relating to treatment of foreign electronic payment service suppliers. The proposed policy appears to further limit the ability of foreign companies to supply services in Vietnam and may require that all cashless retail debit and credit transactions be processed by NAPAS. The draft measure limits to 30 percent the amount of foreign equity investment permitted in intermediary payment services suppliers.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

Vietnam's National Assembly passed the Law on Cybersecurity in June 2018. Article 26 of the Law on Cybersecurity requires online firms to store personal and other types of data and to locate branch or representative offices in Vietnam. The law also establishes new online content restrictions. Vietnam is currently drafting implementing measures and, in November 2018, released a draft decree detailing cases which would result in local data storage and local presence requirements for specific categories of online suppliers. The United States is concerned that implementation of the Law could disrupt international trade in services, and has submitted comments to Vietnam on multiple occasions. The United States will continue to engage the government of Vietnam to ensure cybersecurity legislation and implementing measures do not disrupt international trade in services.

Restrictive Technology Requirements

The Law on Network Information Safety No. 86/2015/QH13, which came into effect on July 1, 2016, includes provisions related to spam, unauthorized collection and distribution of personal information, hackers, and other areas. The new law defined "network information safety" as the protection of network information and network information systems from the unauthorized access, use, disclosure, interruption, amendment or sabotage in order to ensure the confidentiality and usability of the information on the network system. Companies that produce information and communications technology products have expressed concerns about uncertainties created by the ambiguities contained this law and its implementing decrees – Decree 108/2016/ND-CP on conditions for trading in network information security products and services and Decree 58/2016/ND-CP on trading and import-export of civil cryptographic products and services, particularly with respect to import licensing procedures for information and communications technology products with encryption capabilities.

Restriction on the Provision of Internet-Enabled Services

Online Advertising Services

Decree No. 181/2013/ND-CP significantly restricts the supply of online advertising. The decree requires Vietnamese advertisers to contract with a Vietnam-based advertising services provider in order to place advertisements on foreign websites. It also requires any foreign websites with advertising targeting Vietnam to notify the Ministry of Culture, Sports and Tourism in writing of the name and main business lines of the Vietnamese agent who has facilitated the advertising service in Vietnam at least 15 days before publishing an advertisement. Decree 28/2017/ND-CP imposes fines on companies that place advertisements on foreign websites without going through a local intermediary, which significantly affects the ability of suppliers to offer services fully on a cross-border basis. While enforcement action to date has not been evident, enforcement threats have been used to pressure online suppliers over failure to take down content deemed objectionable. The United States will continue to press Vietnam to eliminate these restrictions.

App-Based Services

Over-the-top (OTT) services are Internet-based voice and text services typically supplied via software applications over Internet networks managed by traditional operators in competition with those operators' voice and data services. In October 2014, the MIC released draft regulations for OTT services for public comment. The draft included a requirement for OTT voice and messaging services suppliers to enter into an undefined commercial relationship with a licensed telecommunications supplier in Vietnam as a condition of supplying OTT voice and messaging services in Vietnam. The United States provided detailed comments on this proposal when it was released. This proposed requirement remains in draft form as of February 2019.

Internet-based Content Services

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies or companies with substantial state control. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree 72/2013/ND-CP on the management, provision, and use of Internet services and online information prohibits the use of Internet services to: oppose the government; harm national security, social order, and safety; or propagandize war, terrorism, hatred, violence, or superstition. The United States has raised concerns about these Internet restrictions with Vietnam and will continue to monitor this issue closely. In March 2018, Vietnam issued Decree 27/2018/ND-CP to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

Circular 09/2014/TT-BTTTT "Detailing Management, Provision and Use of Information on Websites and Social Networks," which guides implementation of Decree 72, requires Vietnamese companies that operate general websites and social networks, including blogging platforms, to locate a server system in Vietnam and to store posted information for 90 days and certain metadata for up to two years. To date, enforcement of the decree appears to be very limited, and MIC has not released guidance on how the decree will apply to foreign cross-border service providers.

MIC Circular 38/2016/TT-BTTT on Cross-border provision of General Information, while it does not require localization of servers, does require offshore service providers with a large number of users in Vietnam to comply with local content restrictions. Circular 38 is one of the implementing circulars of Decree No. 72/2013/ND-CP. Specific requirements under Circular 38 apply to an offshore entity that provides cross-border public information into Vietnam (including websites, social networks, online applications, search engines and other similar forms of services and (a) has more than one million hits from Vietnam per month or (b) leases a data center to store digital information in Vietnam in order to provide its services. The offshore service providers have to comply with Vietnam's content requirements by providing contact information to the MIC and cooperating with authorities to take down information that is illegal according to Decree 72.

OTHER BARRIERS

U.S. stakeholders continue to have concerns about the lack of transparency and accountability and other governance issues in Vietnam. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance overall transparency. The United States will continue to work with Vietnam to support these reform efforts and to promote greater transparency.

Export Policies

Export Bans

Under MARD Circular 24 of 2016, Vietnam bans the export of certain wood products. These products include round timber and sawn timber made from natural wood, firewood and charcoal made from timber, and firewood made from natural wood.

Export Taxes

Vietnam imposes export taxes on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. Vietnam also maintains tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Vietnam's export taxes range from 5 percent to 40 percent. According to the Law on Tariffs (No. 107), Vietnam applies export taxes on a wide range of goods including plants and botanical parts (5 percent to 30 percent), ores (20 percent to 40 percent), coal (5 percent to 15 percent), crude oil (10 percent), chemicals (5 percent to 10 percent), skins (5 percent to 10 percent), wood (2 percent to 20 percent), charcoal (5 percent to 10 percent), gems and precious stones (5 percent to 10 percent), silver and gold (2 percent to 5 percent), jewelry (2 percent), and metals and metal products (15 percent to 22 percent).

MOF Decree 128 of 2016 provides an export tax exemption to environment-friendly goods labeled "Green Vietnam."

APPENDIX I

APPENDIX I

Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,[19] USTR prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, is available at http://ustr.gov/about-us/policy-offices/press-office/reports-and-publications. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report[20], barriers to the exports of GHGIRTs are generally similar to those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; local content requirements; investment restrictions, including requirements to partner with domestic firms; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. The reader also is referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2019 report will be released later this year.

In APEC, the United States continued its efforts to reduce barriers to trade in GHGIRTs by working to ensure that economies that had not yet implemented APEC Leaders' 2011 commitment to reduce tariffs on environmental goods to five percent or less fulfilled their commitment to cut these tariffs. As a result of USTR's efforts, Indonesia joined other APEC economies in cutting tariffs on environmental goods, including GHGIRTs, resulting in the reduction of tariffs on hundreds of tariff lines across the Asia-Pacific region, impacting billions of dollars of U.S. exports.

Global trade in environmental goods, including GHGIRTs, is estimated to be over $1 trillion annually, and the United States exported $235 billion of environmental goods in 2017. China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

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[19] Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

[20] The Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment" identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

APPENDIX II

APPENDIX
U.S. Goods Trade for Given Trade Partners in Rank Order of U.S. Goods Exports
(Values in Millions of Dollars)

Country	Goods Balance 2017	Goods Balance 2018	Change 2017-18	Exports* 2017	Exports* 2018	Change 2017-18 Value	Change 2017-18 Percent	Imports** 2017	Imports** 2018	Change 2017-18 Value	Change 2017-18 Percent
World	-795,690	-878,678	-82,988	1,546,273	1,664,085	117,812	7.6	2,341,963	2,542,788	200,825	8.6
Canada	-17,054	-19,754	-2,700	282,265	298,728	16,463	5.8	299,319	318,481	19,162	6.4
Mexico	-70,953	-81,517	-10,565	243,314	265,010	21,696	8.9	314,267	346,528	32,260	10.3
China	-375,576	-419,162	-43,586	129,894	120,341	-9,552	-7.4	505,470	539,503	34,033	6.7
Japan	-68,876	-67,630	1,246	67,605	74,967	7,362	10.9	136,481	142,596	6,115	4.5
United Kingdom	3,198	5,416	2,219	56,258	66,228	9,970	17.7	53,060	60,812	7,752	14.6
Germany	-63,678	-68,250	-4,572	53,897	57,654	3,757	7.0	117,575	125,904	8,329	7.1
Korea	-23,118	-17,946	5,171	48,326	56,344	8,018	16.6	71,444	74,291	2,846	4.0
Netherlands	23,725	24,785	1,059	41,510	49,391	7,880	19.0	17,785	24,606	6,821	38.4
Brazil	7,770	8,333	563	37,222	39,494	2,273	6.1	29,452	31,161	1,710	5.8
Hong Kong	32,563	31,148	-1,414	39,939	37,460	-2,480	-6.2	7,376	6,311	-1,065	-14.4
France	-15,303	-16,195	-892	33,596	36,326	2,731	8.1	48,899	52,522	3,623	7.4
Singapore	10,438	5,885	-4,554	29,806	33,141	3,335	11.2	19,367	27,256	7,889	40.7
India	-22,914	-21,287	1,627	25,689	33,120	7,431	28.9	48,603	54,407	5,805	11.9
Belgium	14,926	14,223	-703	29,924	31,416	1,492	5.0	14,997	17,193	2,195	14.6
Taiwan	-16,732	-15,519	1,213	25,730	30,243	4,513	17.5	42,462	45,762	3,300	7.8
Australia	14,482	15,181	699	24,527	25,306	780	3.2	10,045	10,126	81	0.8
Italy	-31,513	-31,569	-56	18,405	23,153	4,749	25.8	49,918	54,722	4,805	9.6
Switzerland	-14,312	-18,908	-4,596	21,685	22,231	546	2.5	35,997	41,138	5,141	14.3
UAE	15,751	14,541	-1,210	20,020	19,548	-471	-2.4	4,269	5,007	739	17.3
Chile	3,054	3,974	919	13,605	15,340	1,735	12.8	10,551	11,366	815	7.7
Colombia	-244	1,207	1,452	13,312	14,996	1,684	12.7	13,557	13,789	232	1.7
Israel	-9,395	-8,048	1,346	12,550	13,715	1,165	9.3	21,945	21,763	-181	-0.8
Saudi Arabia	-2,533	-10,466	-7,933	16,348	13,624	-2,724	-16.7	18,881	24,090	5,209	27.6
Spain	-4,582	-4,266	316	11,064	12,976	1,912	17.3	15,645	17,241	1,596	10.2
Malaysia	-24,431	-26,519	-2,088	12,964	12,865	-100	-0.8	37,396	39,384	1,988	5.3
Thailand	-20,160	-19,312	848	10,992	12,588	1,597	14.5	31,152	31,900	748	2.4
Ireland	-38,089	-46,782	-8,693	10,708	10,687	-21	-0.2	48,797	57,469	8,672	17.8
Turkey	328	-143	-471	9,741	10,194	453	4.6	9,413	10,337	924	9.8
Argentina	4,806	5,058	253	9,586	9,920	334	3.5	4,780	4,861	81	1.7
Vietnam	-38,355	-39,528	-1,173	8,133	9,684	1,550	19.1	46,488	49,212	2,724	5.9
Peru	1,380	1,750	371	8,663	9,634	971	11.2	7,283	7,883	601	8.2
Philippines	-3,175	-3,891	-716	8,451	8,707	256	3.0	11,626	12,597	972	8.4
Dominican Republic	3,081	3,252	171	7,828	8,561	734	9.4	4,746	5,309	563	11.9
Indonesia	-13,346	-12,643	702	6,864	8,226	1,362	19.8	20,209	20,870	660	3.3
Panama	5,859	6,423	564	6,301	6,885	584	9.3	443	462	20	4.4
Russia	-10,023	-14,128	-4,105	6,998	6,668	-331	-4.7	17,021	20,795	3,774	22.2
Guatemala	2,881	2,440	-440	6,895	6,649	-246	-3.6	4,015	4,209	194	4.8
Costa Rica	1,606	1,467	-139	6,170	6,346	176	2.9	4,564	4,879	315	6.9
Ecuador	-1,558	-973	585	4,821	5,760	940	19.5	6,379	6,734	355	5.6
Honduras	498	897	399	5,080	5,600	521	10.2	4,581	4,703	122	2.7
South Africa	-2,723	-2,953	-230	5,020	5,517	497	9.9	7,743	8,470	727	9.4
Norway	402	-1,285	-1,688	5,453	5,457	4	0.1	5,051	6,743	1,692	33.5
Poland	-2,583	-2,630	-47	4,523	5,413	890	19.7	7,106	8,043	937	13.2
Egypt	2,355	2,575	220	3,992	5,057	1,065	26.7	1,637	2,481	845	51.6
Sweden	-6,996	-6,924	72	3,734	4,483	749	20.0	10,730	11,407	677	6.3
Qatar	1,927	2,852	925	3,124	4,423	1,299	41.6	1,197	1,571	375	31.3
New Zealand	-237	-124	112	3,925	4,067	143	3.6	4,161	4,191	30	0.7
Austria	-7,452	-9,924	-2,472	4,275	3,569	-706	-16.5	11,727	13,493	1,766	15.1
El Salvador	587	907	320	3,058	3,416	358	11.7	2,470	2,509	38	1.6
Czech Republic	-2,319	-2,001	318	2,274	3,004	730	32.1	4,593	5,004	412	9.0
Kuwait	2,218	896	-1,321	5,143	2,984	-2,159	-42.0	2,926	2,088	-838	-28.6
Morocco	987	1,380	393	2,220	2,945	725	32.7	1,233	1,566	333	27.0
Pakistan	-766	-783	-17	2,808	2,929	121	4.3	3,574	3,712	138	3.9
Nigeria	-4,882	-2,952	1,929	2,170	2,668	498	23.0	7,052	5,621	-1,431	-20.3
Denmark	-5,482	-6,340	-858	2,210	2,559	349	15.8	7,692	8,898	1,207	15.7
Ukraine	768	1,113	345	1,788	2,465	677	37.9	1,020	1,352	332	32.6
Oman	918	1,140	223	1,985	2,421	436	22.0	1,067	1,281	213	20.0
Paraguay	2,594	2,248	-346	2,719	2,379	-340	-12.5	125	131	6	4.8
Bangladesh	-4,213	-3,994	219	1,474	2,110	636	43.1	5,687	6,104	417	7.3
Bahrain	-98	1,046	1,143	898	2,037	1,138	126.7	996	991	-5	-0.5

Finland	-4,359	-5,294	-935	1,535	1,873	338	22.0	5,894	7,167	1,272	21.6
Hungary	-3,199	-3,330	-131	1,888	1,752	-137	-7.2	5,088	5,082	-6	-0.1
Jordan	234	-207	-441	1,921	1,606	-314	-16.4	1,687	1,814	126	7.5
Nicaragua	-1,673	-1,984	-311	1,589	1,603	14	0.9	3,263	3,587	324	9.9
Portugal	-2,311	-2,422	-110	1,192	1,464	271	22.7	3,504	3,885	381	10.9
Ethiopia	586	866	280	877	1,311	434	49.4	291	445	153	52.6
Algeria	-2,746	-3,368	-622	1,060	1,250	190	18.0	3,806	4,618	813	21.4
Romania	-1,246	-1,481	-236	955	1,108	154	16.1	2,200	2,590	389	17.7
Greece	-296	-556	-259	961	1,048	87	9.1	1,257	1,603	346	27.5
Luxembourg	584	473	-111	1,078	1,026	-52	-4.8	494	552	59	11.9
Ghana	110	211	102	860	793	-67	-7.8	750	582	-169	-22.5
Kazakhstan	-239	-655	-416	552	729	177	32.1	791	1,385	593	75.0
Lithuania	-888	-600	287	609	708	98	16.1	1,497	1,308	-189	-12.6
Croatia	12	149	138	448	615	167	37.3	436	466	29	6.7
Tunisia	82	-52	-134	544	597	53	9.8	462	649	187	40.6
Bolivia	28	93	65	595	578	-17	-2.8	567	485	-82	-14.4
Angola	-1,794	-2,172	-378	809	527	-283	-34.9	2,604	2,698	95	3.6
Latvia	-71	-217	-145	382	510	129	33.7	453	727	274	60.5
Cambodia	-2,666	-3,379	-713	400	447	46	11.6	3,066	3,826	759	24.8
Sri Lanka	-2,522	-2,304	217	336	372	36	10.7	2,858	2,676	-182	-6.4
Bulgaria	-277	-616	-339	381	370	-11	-2.9	659	987	328	49.7
Kenya	-118	-279	-161	454	365	-89	-19.7	572	644	72	12.6
Estonia	-330	-610	-279	274	347	73	26.6	604	956	352	58.2
Slovenia	-389	-528	-138	372	319	-52	-14.0	761	847	86	11.3
Cote d'Ivoire	-896	-935	-39	320	311	-9	-2.7	1,216	1,247	30	2.5
Slovakia	-2,608	-3,875	-1,267	442	290	-152	-34.4	3,050	4,165	1,115	36.6
Brunei	98	169	70	121	267	146	120.2	23	98	75	330.3
Burma	-155	-232	-77	211	264	52	24.7	366	496	129	35.3
Malta	130	4	-127	293	201	-92	-31.5	163	197	34	21.1
Cyprus	35	64	29	82	131	49	59.3	47	67	20	42.0
Laos	-71	-127	-56	26	15	-11	-41.4	96	142	46	47.3
European Union - 28	-151,363	-169,296	-17,933	283,269	318,619	35,350	12.5	434,633	487,916	53,283	0.1

U.S. Services Trade for Given Trade Partners in Rank Order of U.S. Services Exports
(Values in Millions of Dollars)

Country	Services 2016	Services 2017	Change 2016-17	Exports* 2016	Exports* 2017	Change 2016-17 Value	Change 2016-17 Percent	Imports** 2016	Imports** 2017	Change 2016-17 Value	Change 2016-17 Percent
World	249,050	255,219	6,169	758,888	797,690	38,802	5.1	509,838	542,471	32,633	6.4
United Kingdom	14,520	12,697	-1,823	66,859	69,624	2,765	4.1	52,339	56,927	4,588	8.8
Canada	23,772	25,421	1,649	54,360	58,446	4,086	7.5	30,588	33,025	2,437	8.0
China	38,907	40,209	1,302	54,939	57,628	2,689	4.9	16,032	17,419	1,387	8.7
Ireland	31,076	29,698	-1,378	48,603	49,841	1,238	2.5	17,527	20,143	2,616	14.9
Japan	13,980	13,366	-614	45,044	46,428	1,384	3.1	31,064	33,062	1,998	6.4
Switzerland	8,937	10,346	1,409	32,727	37,291	4,564	13.9	23,790	26,945	3,155	13.3
Mexico	7,560	7,382	-178	31,657	32,874	1,217	3.8	24,097	25,492	1,395	5.8
Germany	-1,896	-2,672	-776	31,879	32,692	813	2.6	33,775	35,364	1,589	4.7
Brazil	16,163	19,223	3,060	23,905	26,431	2,526	10.6	7,742	7,208	-534	-6.9
Korea	10,821	13,282	2,461	21,724	24,165	2,441	11.2	10,903	10,883	-20	-0.2
India	-5,201	-4,388	813	20,616	23,748	3,132	15.2	25,817	28,136	2,319	9.0
Australia	15,060	14,383	-677	22,283	22,090	-193	-0.9	7,223	7,707	484	6.7
France	3,232	1,711	-1,521	19,794	19,242	-552	-2.8	16,562	17,531	969	5.9
Singapore	9,704	10,155	451	16,924	18,047	1,123	6.6	7,220	7,892	672	9.3
Netherlands	5,188	6,125	937	15,747	17,286	1,539	9.8	10,559	11,161	602	5.7
Hong Kong	1,107	2,124	1,017	10,010	11,927	1,917	19.2	8,903	9,803	900	10.1
Taiwan	3,899	1,796	-2,103	11,646	9,878	-1,768	-15.2	7,747	8,082	335	4.3
Italy	-2,482	-3,086	-604	8,878	9,321	443	5.0	11,360	12,407	1,047	9.2
Saudi Arabia	8,158	7,975	-183	9,340	9,185	-155	-1.7	1,182	1,210	28	2.4
Argentina	5,907	6,136	229	8,414	9,047	633	7.5	2,507	2,911	404	16.1
Spain	449	-63	-512	6,770	6,958	188	2.8	6,321	7,021	700	11.1
Luxembourg	4,105	4,804	699	6,182	6,696	514	8.3	2,077	1,892	-185	-8.9
Colombia	3,074	2,959	-115	6,240	6,238	-2	0.0	3,166	3,279	113	3.6
Israel	-1,273	-1,491	-218	5,312	5,873	561	10.6	6,585	7,364	779	11.8
Sweden	2,864	2,421	-443	5,931	5,649	-282	-4.8	3,067	3,228	161	5.2
Denmark	2,258	2,466	208	4,937	5,544	607	12.3	2,679	3,078	399	14.9
Belgium	174	95	-79	5,903	5,510	-393	-6.7	5,729	5,415	-314	-5.5
Russia	2,200	2,878	678	4,504	4,947	443	9.8	2,304	2,069	-235	-10.2
Chile	2,772	2,764	-8	4,312	4,554	242	5.6	1,540	1,790	250	16.2
Malaysia	1,063	1,772	709	3,030	3,539	509	16.8	1,967	1,767	-200	-10.2
Norway	328	74	-254	3,044	3,092	48	1.6	2,716	3,018	302	11.1
Poland	537	826	289	2,460	3,077	617	25.1	1,923	2,251	328	17.1
Philippines	-3,481	-3,497	-16	2,737	3,018	281	10.3	6,218	6,515	297	4.8
Turkey	1,215	1,175	-40	3,043	3,004	-39	-1.3	1,828	1,829	1	0.1
Thailand	-718	-962	-244	2,687	2,880	193	7.2	3,405	3,842	437	12.8
South Africa	1,075	970	-105	2,918	2,878	-40	-1.4	1,843	1,908	65	3.5
New Zealand	389	289	-100	2,594	2,782	188	7.2	2,205	2,493	288	13.1
Indonesia	1,402	1,598	196	2,364	2,736	372	15.7	962	1,138	176	18.3
Peru	1,096	1,166	70	2,702	2,671	-31	-1.1	1,606	1,505	-101	-6.3
Nigeria	2,085	2,014	-71	2,508	2,457	-51	-2.0	423	443	20	4.7
Vietnam	995	1,057	62	2,201	2,336	135	6.1	1,206	1,279	73	6.1
Finland	-325	378	703	2,132	2,170	38	1.8	2,457	1,792	-665	-27.1
Costa Rica	-720	-806	-86	2,105	1,985	-120	-5.7	2,825	2,791	-34	-1.2
Dominican Republic	-2,980	-3,118	-138	1,803	1,925	122	6.8	4,783	5,043	260	5.4
Guatemala	609	541	-68	1,600	1,660	60	3.8	991	1,119	128	12.9
Austria	-70	-147	-77	1,519	1,625	106	7.0	1,589	1,772	183	11.5
Panama	272	330	58	1,503	1,601	98	6.5	1,231	1,271	40	3.2
Czech Republic	-43	-101	-58	1,247	1,252	5	0.4	1,290	1,353	63	4.9
Honduras	514	541	27	1,154	1,207	53	4.6	640	666	26	4.1
Portugal	-622	-932	-310	1,123	1,193	70	6.2	1,745	2,125	380	21.8
El Salvador	412	389	-23	1,135	1,131	-4	-0.4	723	742	19	2.6
Greece	-2,097	-2,185	-88	904	1,114	210	23.2	3,001	3,299	298	9.9
Hungary	168	118	-50	1,111	1,111	0	0.0	943	993	50	5.3
Romania	-191	-240	-49	876	876	0	0.0	1,067	1,116	49	4.6
Jordan	109	94	-15	704	760	56	8.0	595	666	71	11.9
Morocco	-54	-198	-144	575	634	59	10.3	629	832	203	32.3
Oman	145	270	125	450	528	78	17.3	305	258	-47	-15.4
Bulgaria	-114	63	177	445	469	24	5.4	559	406	-153	-27.4
Nicaragua	-185	-173	12	441	441	0	0.0	626	614	-12	-1.9
Croatia	129	68	-61	386	382	-4	-1.0	257	314	57	22.2

Slovakia				380	361	-19	-5.0	(D)	(D)		
Bahrain	-753	-699	54	270	344	74	27.4	1,023	1,043	20	2.0
Lithuania	-265	-282	-17	228	283	55	24.1	493	565	72	14.6
Cyprus				180	235	55	30.6	(D)	(D)		
Malta	-477	-492	-15	179	208	29	16.2	656	700	44	6.7
Estonia	65	74	9	177	207	30	16.9	112	133	21	18.8
Latvia	68	111	43	163	196	33	20.2	95	85	-10	-10.5
Slovenia	108	95	-13	185	180	-5	-2.7	77	85	8	10.4
Brunei	52	46	-6	61	55	-6	-9.8	9	9	0	0.0
European Union - 28	56,079	51,437	-4,642	235,242	243,405	8,163	3.5	179,163	191,968	12,805	7.1

U.S. FDI Abroad for Given Trade Partners in Rank Order of FDI
(Values in Millions of Dollars)

Country	FDI*** 2016	FDI*** 2017	% Change 2016-17	FDI Area
World	5,586,030	6,013,335	7.6	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Netherlands	898,495	936,728	4.3	Nonbank Holding Companies, Manufacturing, Finance/Insurance
United Kingdom	686,048	747,571	9.0	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Luxembourg	640,646	676,418	5.6	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Ireland	391,264	446,383	14.1	Nonbank Holding Companies, Information Services, Manufacturing
Canada	365,375	391,208	7.1	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Singapore	255,344	274,260	7.4	Nonbank Holding Companies, Wholesale Trade, Manufacturing
Switzerland	187,048	249,968	33.6	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Australia	166,430	168,855	1.5	Nonbank Holding Companies, Manufacturing, Mining
Germany	133,696	136,128	1.8	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Japan	124,550	129,064	3.6	Finance/Insurance, Manufacturing, Information Services
Mexico	100,734	109,671	8.9	Manufacturing, Nonbank Holding Companies, Finance/Insurance
China	97,287	107,556	10.6	Manufacturing, Wholesale Trade, Finance/Insurance
France	80,739	85,572	6.0	Manufacturing, Finance/Insurance, Nonbank Holding Companies
Hong Kong	68,944	81,234	17.8	Nonbank Holding Companies, Wholesale Trade, Finance/Insurance
Brazil	66,418	68,272	2.8	Manufacturing, Finance/Insurance, Mining
Belgium	51,589	54,954	6.5	Manufacturing, Wholesale Trade, Finance/Insurance
India	38,634	44,458	15.1	Professional, Scientific, And Technical Services, Manufacturing, Wholesale Trade
Korea	38,493	41,602	8.1	Manufacturing, Finance/Insurance, Wholesale Trade
Sweden	31,723	34,622	9.1	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Spain	33,484	33,128	-1.1	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Italy	30,922	30,708	-0.7	Manufacturing, Finance/Insurance, Wholesale Trade
Norway	29,230	29,187	-0.1	
Israel	10,325	26,667	158.3	Manufacturing, Professional, Scientific, And Technical Services, Information Services
Chile	28,959	25,884	-10.6	Manufacturing, Finance/Insurance, Nonbank Holding Companies
Taiwan	15,935	17,031	6.9	Manufacturing, Wholesale Trade, Finance/Insurance
UAE	13,568	16,785	23.7	Mining, Wholesale Trade, Manufacturing
Indonesia	14,944	15,171	1.5	Mining, Nonbank Holding Companies, Manufacturing
Malaysia	14,606	15,080	3.2	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Thailand	18,021	15,006	-16.7	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Argentina	14,057	14,907	6.0	Manufacturing, Information Services, Finance/Insurance
Russia	14,520	13,881	-4.4	Manufacturing, Nonbank Holding Companies, Information Services
Denmark	17,018	13,873	-18.5	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Poland	11,863	12,604	6.2	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
New Zealand	11,948	11,938	-0.1	
Saudi Arabia	10,585	11,085	4.7	Nonbank Holding Companies, Mining, Wholesale Trade
Egypt	12,561	9,352	-25.5	
Qatar	7,938	8,183	3.1	
Austria	6,871	7,819	13.8	Manufacturing, Finance/Insurance, Wholesale Trade
South Africa	6,659	7,334	10.1	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
Colombia	7,467	7,222	-3.3	Mining, Manufacturing, Wholesale Trade
Hungary	7,223	7,131	-1.3	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Philippines	6,325	7,116	12.5	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Peru	5,742	6,370	10.9	Mining, Manufacturing, Nonbank Holding Companies
Nigeria	4,349	5,774	32.8	
Czech Republic	4,888	5,406	10.6	Manufacturing, Information Services, Professional, Scientific, And Technical Services
Panama	4,301	4,706	9.4	Nonbank Holding Companies, Wholesale Trade, Finance/Insurance
Turkey	3,852	4,266	10.7	Manufacturing, Wholesale Trade, Finance/Insurance
Romania	3,923	3,620	-7.7	
Finland	3,200	3,318	3.7	Manufacturing, Information Services, Professional, Scientific, And Technical Services
El Salvador	2,774	3,037	9.5	
Algeria	2,986	3,030	1.5	
Dominican Republic	1,226	2,140	74.6	Manufacturing, Wholesale Trade, Information Services
Portugal	1,985	2,060	3.8	Wholesale Trade, Manufacturing, Finance/Insurance
Vietnam	1,956	2,010	2.8	
Oman	1,583	1,840	16.2	
Ghana	1,982	1,698	-14.3	
Cyprus	1,996	1,650	-17.3	
Costa Rica	1,349	1,567	16.2	Manufacturing, Professional, Scientific, And Technical Services, Mining
Honduras	1,283	1,405	9.5	Manufacturing, Wholesale Trade, Wholesale Trade
Greece	1,042	1,224	17.5	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services

Guatemala	992	1,048	5.6	
Slovakia	562	867	54.3	
Bulgaria	711	848	19.3	
Angola	646	780	20.7	
Ecuador	1,036	779	-24.8	Manufacturing, Mining, Wholesale Trade
Malta	547	601	9.9	
Bolivia	552	598	8.3	
Pakistan	412	518	25.7	
Bangladesh	458	460	0.4	
Bahrain	383	423	10.4	
Morocco	434	412	-5.1	
Kenya	438	405	-7.5	
Ukraine	476	398	-16.4	
Slovenia	354	369	4.2	
Kuwait	250	296	18.4	
Tunisia	317	279	-12.0	
Jordan	209	232	11.0	
Croatia	176	199	13.1	
Nicaragua	217	187	-13.8	
Paraguay	207	179	-13.5	
Sri Lanka	156	168	7.7	
Lithuania	120	154	28.3	
Cambodia	135	151	11.9	
Estonia	71	72	1.4	
Latvia	69	71	2.9	
Brunei	16	19	18.8	
Burma	1	-4	-500.0	
Cote d'Ivoire	62	-146	-335.5	
European Union - 28	3,041,226	3,244,095	6.7	Nonbank Holding Companies, Finance/Insurance, Manufacturing

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