

2018 National Trade Estimate Report on

FOREIGN TRADE BARRIERS



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Office of the United States Trade Representative

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LIST OF FREQUENTLY USED ACRONYMS

AD.....	Antidumping
AGOA.....	African Growth and Opportunity Act
APEC.....	Asia Pacific Economic Cooperation
ASEAN.....	Association of Southeast Asian Nations
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
CTE.....	Committee on Trade and the Environment
CTG.....	Council for Trade in Goods
CVD.....	Countervailing Duty
DDA.....	Doha Development Agenda
DOL.....	Department of Labor
DSB.....	Dispute Settlement Body
DSU.....	Dispute Settlement Understanding
EU.....	European Union
FOIA.....	Freedom of Information Act
GATT.....	General Agreement on Tariffs and Trade
GATS.....	General Agreements on Trade in Services
GDP.....	Gross Domestic Product
GSP.....	Generalized System of Preferences
GPA.....	Government Procurement Agreement
HS.....	Harmonized System
IPR.....	Intellectual Property Rights
ICTIME.....	Interagency Center on Trade Implementation, Monitoring, and Enforcement
ITA.....	Information Technology Agreement
LDBDC.....	Least-Developed Beneficiary Developing Country
MFN.....	Most Favored Nation
MOU.....	Memorandum of Understanding
NAFTA.....	North American Free Trade Agreement
OECD.....	Organization for Economic Cooperation and Development
SME.....	Small and Medium Size Enterprise
SPS.....	Sanitary and Phytosanitary Measures
TAA.....	Trade Adjustment Assistance
TBT.....	Technical Barriers to Trade
TIFA.....	Trade & Investment Framework Agreement
TPRG.....	Trade Policy Review Group
TPSC.....	Trade Policy Staff Committee
TRIMS.....	Trade Related Investment Measures
TRIPS.....	Trade Related Intellectual Property Rights
UNCTAD.....	United Nations Conference on Trade and Development
URAA.....	Uruguay Round Agreements Act

USDA..... U.S. Department of Agriculture
USITC..... U.S. International Trade Commission
USTR..... United States Trade Representative
WTO World Trade Organization

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FOREWORD

SCOPE AND COVERAGE

The 2018 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 33rd in an annual series that highlights significant foreign barriers to U.S. exports. This document is a companion piece to the President's 2018 Trade Policy Agenda and 2017 Annual Report published by Office of the United States Trade Representative 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, the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers. The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory enhances awareness of these trade restrictions and facilitates negotiations aimed at reducing or eliminating these barriers.

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

This report discusses the largest export markets for the United States, including 60 countries, the European Union, Taiwan, Hong Kong, and one regional body. 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, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

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

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

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

- Sanitary and phytosanitary measures and technical barriers to trade;
- Government procurement (*e.g.*, “buy national” policies and closed bidding);
- Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);
- Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes and enforcement of intellectual property rights);
- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, restrictions on the use of foreign data processing, and barriers to the provision of services by foreign professionals);
- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);
- Government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country’s markets;
- Digital trade barriers (*e.g.*, restrictions and other discriminatory practices affecting cross-border data flows, digital products, Internet-enabled services, and other restrictive technology requirements); and,
- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption,ⁱ or that affect a single sector).

The NTE Report highlights the increasingly critical nature of standards-related measures (including testing, labeling and certification requirements) and sanitary and phytosanitary (SPS) measures to U.S. trade policy, to identify and call attention to problems and efforts to resolve them during the past year and to signal new or existing areas in which more progress needs to be made. Standards-related and SPS measures serve an important function in facilitating international trade, including by enabling small and medium sized enterprises (SMEs) to obtain greater access to foreign markets. Standards-related and SPS measures also enable governments to pursue legitimate objectives such as protecting human, plant, and animal health, the environment, and preventing deceptive practices. However, standards-related and SPS measures that are nontransparent and discriminatory can act as significant barriers to U.S. trade. Such measures can pose a particular problem for SMEs, which often do not have the resources to address these problems on their own.

To highlight the growing and evolving trade using or enabled by electronic networks and information and communications technology, and reflecting input from numerous stakeholders, relevant country chapters include a dedicated section on barriers to digital trade and reflecting digital trade market developments for U.S. exports.

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.

The NTE Report identifies localization barriers to trade in the relevant barrier category in the report’s individual sections to assist efforts to reduce their use and to inform the public on the scope and diversity of these practices. The United States has observed a growing trend among trading partners to impose localization barriers to trade – measures designed to protect, favor, or stimulate domestic industries, service providers, or intellectual property at the expense of imported goods, services or foreign-owned or developed intellectual property. These measures may operate as disguised barriers to trade and unreasonably differentiate between domestic and foreign products, services, intellectual property, or suppliers. They can distort trade, discourage foreign direct investment and lead other trading partners to impose similarly detrimental measures. For these reasons, it has been longstanding U.S. trade policy to advocate strongly against localization barriers and encourage trading partners to pursue policy approaches that help their economic growth and competitiveness without discriminating against imported goods and services.

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 works 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 2018 Trade Policy Agenda and 2017 Annual Report of the President on the Trade Agreements Program.

NTE sections report the most recent data on U.S. bilateral trade in goods and services and compare the data to the preceding period. 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 (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 in the Department of Commerce (BEA). (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 of specific foreign trade barriers and other trade distorting practices. Where consultations related to specific foreign practices were proceeding at the time this report was published, estimates were excluded, in order to avoid prejudice to those consultations.

The estimates included in this report constitute an attempt to assess quantitatively the potential effect of removing certain foreign trade barriers on particular U.S. exports. However, the estimates cannot be used to determine the total effect 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 these measures 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 there is no readily available estimate of the additional cost these restrictions impose. 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, it may be difficult to estimate the impact of such nontariff barriers on U.S. exports. When the value of actual U.S. exports is reduced to an unknown extent by one or more than one nontariff measure, it then becomes derivatively difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

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

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report.

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

In the context of trade actions brought under U.S. law, 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 2018

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.

The United States led efforts to launch the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-bribery Convention). In November 1997, the United States and 33 other nations adopted the Anti-bribery Convention, which currently is in force for 43 countries, including the United States. The Anti-bribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe (for additional information, see <http://www.export.gov/tcc> and <http://www.oecd.org>).

The United States also played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anticorruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental corruption offenses, including bribery of domestic as well as foreign public officials. As of October 2017 (latest data available), there were 140 signatories and 183 parties, including the United States.

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

The United States continues to push its anticorruption agenda forward. The United States promotes transparency and reforms that specifically address corruption of public officials. The United States led other countries in concluding multilateral negotiations on the World Trade Organization (WTO) Trade Facilitation Agreement which 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 WTO Government Procurement Agreement, which contains a requirement 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 APEC and other fora.

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

ALGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Algeria was \$2.7 billion in 2017, a 165.0 percent increase (\$1.7 billion) over 2016. U.S. goods exports to Algeria were \$1.1 billion, down 51.6 percent (\$1.1 billion) from the previous year. Corresponding U.S. imports from Algeria were \$3.8 billion, up 18.0 percent. Algeria was the United States' 75th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Algeria (stock) was \$4.5 billion in 2016 (latest data available), a 8.6 percent increase from 2015.

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

Food Products

Algeria requires imported food products to have at least 80 percent of their shelf life remaining at the time of importation. In 2017, Algeria introduced new labelling regulations on certain beverage products containing artificial sweeteners,

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. Algeria also does not accept U.S. export certificates for beef. U.S. and Algerian veterinary authorities are negotiating export certificates to allow for the importation of U.S. breeding cattle and bovine genetics.

IMPORT POLICIES

Tariffs

Goods imported into Algeria face a range of tariffs, from zero 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 pharmaceuticals. The few items that are duty free are generally EU-origin goods that are used in manufacturing and are exempt from tariffs under the 2006

European Union-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).

Customs Procedures

Clearing goods through Algerian customs is the single most frequently reported problem facing foreign companies operating in Algeria. Delays can take weeks or months, and in many cases are not accompanied by official explanations. 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 to be stamped with a “Visa Fraud” note from the Ministry of Commerce, indicating that the goods have successfully passed a fraud inspection, before the goods are cleared. Many importations also require authorizations from multiple ministries, which cause 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 fee rates double when goods are stored for longer than 10 days.

Import Restrictions

Pharmaceuticals and Medical Devices

Since 2010, Algeria’s Ministry of Health has been issuing regulations to restrict the importation of a number of pharmaceutical products and medical devices. The Ministry of Health has published a list of 357 pharmaceutical products banned from importation. In 2007, the Algerian government 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 that has been sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

Import Licenses and Quotas

The 2016 budget, signed into law on December 31, 2015, empowers 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: (1) vehicles for tourism and resale, (2) specialized and construction vehicles, (3) concrete in various forms, (4) concrete reinforcing bars, (5) wire rod in various forms, (6) wire rod used for concrete reinforcing, (7) wood of various types, (8) ceramics of various types, (9) grey Portland cement, (10) fresh or refrigerated beef, (11) frozen beef, (12) cheese, (13) citrus fruits, (14) apples, (15) bananas, (16) barley, (17) garlic, (18) corn, (19) soybean meal, (20) concentrated minerals and vitamins, (21) phosphates, and (22) double concentrated tomato. Some exceptions are permitted for products being provided for government use. More recently, in January 2018, Algeria issued a decree temporarily suspending its import licensing system for 851 products, which effectively banned imports of those products into Algeria. The products include: agricultural and industrial goods such as meat and poultry; dairy products; processed and prepared foods; tractors; machinery; and, consumer items. The United States will continue to monitor this activity and raise appropriate concerns with Algeria.

Vehicles

Vehicle imports through dealers were prohibited in 2017. Individuals were able to purchase on a personal basis a vehicle overseas and import it to Algeria. Vehicles cost approximately double the market rates when purchased by individuals overseas and imported. A new book of specifications concerning the automotive industry was released in December 2017, with import quotas for 2018 to be announced thereafter. Changes in regulations did not address specific import quotas, but provided that imports will only be permitted for

automotive companies who engage in local assembly or manufacturing. Minimum local integration rates for assembly plants will be 15 percent after 3 years, and 40 percent to 60 percent after 5 years.

Other Product Bans

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

GOVERNMENT PROCUREMENT

In 2018, Algeria is expected to begin restricting foreign competition in bids for public projects, starting with public housing projects. This strengthens policies implemented in 2014, which prohibited public housing projects from using imported construction materials when local equivalents were available. 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.

Algeria is not a signatory to, nor an observer of, the WTO Agreement on Government Procurement Agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Algeria remained on the Priority Watch List in the Special 301 Report in 2017. Significant challenges continue with respect to fair and equitable market access for U.S. intellectual property rights (IPR) rights holders in Algeria, notably for pharmaceutical and medical device manufacturers. Though Algeria has taken steps to raise awareness of IPR issues and has begun to engage with the United States, it has not taken significant steps to improve IPR enforcement or effectively address IPR-related deficiencies. Algeria continues to struggle to provide adequate and effective IPR protection and enforcement. Algeria fails to enforce its existing antipiracy statutes, including those combating the use of unlicensed software, and to provide adequate judicial remedies in cases of patent infringement. 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.

INVESTMENT BARRIERS

Algeria's 51/49 investment law requires Algerian ownership of at least 51 percent in all projects involving foreign investments. The requirement originated in a 2006 law governing hydrocarbons but was expanded in 2009 to cover foreign investment in all sectors. As there is no economy-wide 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.

The extent of Algerian bureaucratic requirements causes significant delays and deters many companies from attempting to enter the market. 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.

BARRIERS TO DIGITAL TRADE

Algerian citizens may not purchase goods online but can complete online orders and make payment, in local currency, upon the delivery of goods or app-based transportation services. Businesses, however, may purchase goods and services online and import them for business-related uses.

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 \$1.8 billion in 2017, a 11.8 percent increase (\$189 million) over 2016. U.S. goods exports to Angola were \$810 million, down 35.2 percent (\$441 million) from the previous year. Corresponding U.S. imports from Angola were \$2.6 billion, down 8.8 percent. Angola was the United States' 84th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Angola (stock) was \$804 million in 2016 (latest data available), a 236.4 percent increase from 2015.

IMPORT POLICIES

Tariffs and Nontariff Measures

Angola is a member of the WTO and the Southern African Development Community (SADC). 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. Angola approved a new harmonized tariff schedule in November 2017. The new tariff regime assigns minimum rates for the import of essential goods and other goods that the country does not produce. Medicines, educational material (*i.e.*, school books), and automotive parts imported by automotive assembly industries that invest in Angola are exempt from customs duties under the new tariff system.

Customs Barriers

Administration of Angola's customs service has improved in the last few years but remains a barrier to market access. Under Presidential Decree No. 63/13, pre-shipment inspection is no longer mandatory for goods shipped since June 12, 2013. However, traders may continue to contract for pre-shipment inspection services from private inspection agencies if they wish to benefit from faster "green channel" access, or if their letter of credit agreement requires pre-shipment inspection. 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 import value of the declaration.

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: pharmaceutical substances and saccharine and derived products (Ministry of Health); fiscal or postal stamps, radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and other goods imported to be given away as samples (Ministry of Customs). The import of goods such as poultry has been hindered at times through the use of restrictive import licensing rules.

Angola has not ratified the WTO Trade Facilitation Agreement.

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 already form a preference for a specific business before receiving all of the bids.

The Promotion of the Angolan Private Entrepreneurs Law provides Angolan companies preferential treatment in the government's procurement of goods, services, and public works contracts. Lacking the capacity to perform the contracts themselves, Angolan companies often deliver these goods and services by subcontracting with foreign companies.

The latest Public Procurement law entered into force on September 16, 2016 (Law National Assembly Law No. 9/16, of 16 June 2016), encompassing 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.

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

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Intellectual property rights (IPR) are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights). Angola is a party to the World Intellectual Property Organization (WIPO) Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty. Although the Angolan National Assembly continues to work to strengthen existing legislation, IPR protection and enforcement remains weak. For example, statistics about seizures of counterfeit goods are not publicly available from the government of Angola.

INVESTMENT BARRIERS

Angola can be a difficult environment for foreign investors. Oil revenues contribute 75 percent of government revenues and 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. To manage the depleting reserves, exacerbated by the loss of access to U.S. dollar trading, in 2016 the Central Bank of Angola implemented a process that severely limited foreign exchange approvals for private citizens and businesses. American and non-American businesses alike report facing significant impediments when seeking approvals to repatriate profits and make outward remittances in foreign currency. Local importers who deposit foreign currency are often unable to withdraw their deposits without authorization from the Central Bank. The loss of dollar-denominated correspondent banking relationships for Angolan banks has also complicated international transfers and payments. A process implemented in 2016 prioritized the authorization for foreign exchange for imports for the energy sector and for food and medicine. As of early 2018, the government has taken steps that could reduce the difference between the official and black market exchange rates.

On August 26, 2015, the Angolan government enacted a new private investment law that stripped the National Agency for Private Investment of its authority with respect to attracting, facilitating, and approving investments. The law assigned responsibility for overseeing new investments across various ministries.

FOREIGN TRADE BARRIERS

The law maintains the existing requirement that a \$1 million investment is required of foreign investors to be eligible for fiscal incentives from the government, while lowering the eligibility threshold for Angolan investors to \$500,000. The law also requires at least 35 percent local participation in foreign investments in the following sectors: electricity, water, tourism, hospitality, transportation, logistics, telecommunications, information technology, construction, and media. The previous law required local partnerships in only the energy, banking, and insurance sectors.

The new investment law expressly prohibits private investment in areas such as defense and national security; banking activities relating to the operations of the Central Bank of Angola and the mint; the administration of ports and airports; and other areas where the law gives the state exclusive responsibility. Under the new law, foreign investors pay higher taxes on dividends and profit repatriation; the new tax rates start at 15 percent and rise to as much as 50 percent, depending on the date and amount of repatriation.

By law, the Council of Ministers has 30 days to review a foreign investment application, although in practice decisions are often subject to lengthy delays. Obtaining the proper permits and business licenses to operate in Angola is time consuming and adds to the cost of investment. The Angolan justice system can be slow and arduous, including with respect to enforcing contracts, and while existing law contemplates domestic and international arbitration, arbitration law is not widely practiced in the country.

Legislation for the petroleum sector requires most foreign oil services companies to form joint venture partnerships with local companies. With respect to the provision of goods and services not requiring heavy capital investment or specialized expertise, foreign companies may only participate as a contractor or sell manufactured products to Angolan companies for resale. Foreign petroleum companies face local content requirements forcing 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. Furthermore, payments for goods and services provided by resident service providers must be made in local currency. In October 2017, President Lourenço convened a special task force to address issues in the petroleum sector, including a review of laws and regulations.

OTHER BARRIERS

Corruption

Despite recent efforts by President Lourenço to prioritize the fight against corruption – notably through the dismissal of high ranking officials in state companies and government agencies – corruption remains a problem in Angola. Corruption is prevalent in Angola for many reasons, including but not limited to an inadequately trained civil service, a highly centralized bureaucracy, antiquated regulations, and a lack of implementation of anticorruption laws. “Gratuities” and other facilitation fees are sometimes requested to secure quicker service and approval. It is common for Angolan government officials to have substantial private business interests that are not necessarily publicly disclosed. Likewise, it is difficult to determine the ownership of some Angolan companies. The business climate continues to favor those connected to the government. Laws and regulations regarding conflict of interest are not widely 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. While 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, 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 the 1977 amendments to the Export Administration Act (EAA)) were adopted to 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 this legislation and continues to be the principal boycott with which U.S. companies must be concerned. The EAA's antiboycott provisions, enforcement of which is overseen by the Department of Commerce's Office of Antiboycott Compliance (OAC), prohibit certain types of conduct undertaken in support of the Arab League boycott of Israel. These types of prohibited activity include, *inter alia*, agreements by companies to refuse to do business with Israel, furnishing by companies of information about business relationships with Israel, and implementation of letters of credit that include prohibited 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. Ongoing political upheaval in Syria since 2011 has prevented the CBO from convening meetings in Damascus on a regular basis.

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 officially participated in the Arab League boycott. Djibouti generally supports Palestinian causes in international organizations and there is little direct trade between Djibouti and Israel. However, the government of Djibouti currently does not enforce any aspect of the boycott.

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. In 2017, there were 28 prohibited requests (as defined by U.S. antiboycott laws) from Iraqi entities reported to the U.S. Department of Commerce, down from 51 in 2016. 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 June 2013 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.

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 application of 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 the boycott.

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. The government informally recognizes the primary aspect of the boycott due to Morocco's membership in the Arab League, but 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 advocating 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: Syria, traditionally, was diligent in implementing laws to enforce the Arab League boycott, maintaining 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. In the wake of the 2011 Tunisian revolution, there has been no indication that Tunisian government policy with respect to the boycott has changed.

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 ensure that such language is not included in new tender documents and have removed boycott-related language when 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 that office closed 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.

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, multiple boycott-related requests continue to emanate from Emirati entities. 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; and, Turkey has an active history of trade with Israel.

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$4.7 billion in 2017, a 22.8 percent increase (\$883 million) over 2016. U.S. goods exports to Argentina were \$9.5 billion, up 11.8 percent (\$1.0 billion) from the previous year. Corresponding U.S. imports from Argentina were \$4.8 billion, up 2.5 percent. Argentina was the United States' 29th largest goods export market in 2017.

U.S. exports of services to Argentina were an estimated \$8.3 billion in 2017, and U.S. imports were \$2.3 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$9.6 billion in 2015 (latest data available).

U.S. foreign direct investment (FDI) in Argentina (stock) was \$13.7 billion in 2016 (latest data available), a 0.9 percent increase from 2015. U.S. direct investment in Argentina is led by manufacturing, information, and mining.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity Assessment and Safety Certificate Requirements for Electrical Products

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 repetitive testing requirements are applicable only to foreign manufacturers, and they impose significant delays and increase costs. Additionally, pursuant to Resolution 508/2015, which was 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 from the Argentine Gas Institute for their imports.

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. Some U.S. companies report improvements in the process for obtaining safety certificates, although they continue to engage with the government to further improve the system. The United States continues to monitor the implementation of Argentina's safety certification requirements.

Sanitary and Phytosanitary Barriers

Live Cattle, Beef, and Beef Products

Argentina banned imports of all U.S. live cattle, beef, and beef products in 2002 due to concerns with bovine spongiform encephalopathy (BSE). In June 2015, through Resolution 238/2015, Argentina's National Agricultural and Food Health and Quality Service (SENASA) published new import requirements for ruminants and ruminant products. Resolution 238/2015 adopted three World Organization for Animal Health (OIE) categories for BSE risk classification. Through Resolution 238/2015, Argentina recognized

the OIE's classification of the United States as a country with negligible BSE risk. However, full market access for U.S. beef products has not yet been restored. The United States will continue to engage with Argentina to establish conditions for full market access for U.S. beef products.

Pork

Argentina does not currently allow imports of U.S. pork. In October 2016, the United States proposed to SENASA revisions to a sanitary certificate to address concerns raised by Argentina in previous discussions. SENASA had indicated that it would only accept imports of U.S. pork from herds that have tested negative for Trichinellosis and have no reported cases of Porcine Reproductive and Respiratory Syndrome (PRRS). The United States does not consider these requirements to be science-based. The OIE does not recognize trade in pork as posing a threat of transmitting PRRS. In addition, U.S. producers maintain stringent biosecurity protocols that have virtually eradicated trichinae in commercial pork production.

The United States and Argentina engaged extensively in 2017 to address sanitary concerns and negotiate a sanitary certificate based on science that would allow for full market access for U.S. pork. In September and October 2017, SENASA carried out an audit of the U.S. food safety system and the U.S. commercial pork production and distribution systems. The United States will continue engaging with Argentina to restore full market access for U.S. pork and pork product exports.

Poultry

Argentina does not allow imports of fresh, frozen, and chilled poultry from the United States due to concerns over Avian Influenza (AI). Argentina also has not recognized the U.S. sanitary inspection system as equivalent to the Argentine system. In October 2015, APHIS and the Foreign Agricultural Service (FAS) provided SENASA a comprehensive presentation on the status of Highly Pathogenic Avian Influenza (HPAI) in the United States and on the success of the U.S. Government's eradication program. In addition, APHIS requested that Argentina regionalize its restrictions related to HPAI by either state or county. In November 2015, APHIS informed SENASA that the United States had complied with all the required OIE actions and requirements related to HPAI needed to be declared free of the disease after a 2015 HPAI outbreak. Argentina has indicated it would accept cooked poultry products from the United States, but there is no agreement yet on the terms of the necessary sanitary certificate as Argentina has maintained that the U.S. poultry inspection system is not equivalent to the Argentine system. During bilateral discussions with Argentina throughout 2017, the United States attempted to resolve the market access issues for poultry, including the certification requirements. The United States will continue to engage with Argentina to resolve this issue.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

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 to 35 percent *ad valorem*. The CET allows for a limited number of exceptions, but Argentina's import tariffs generally follow the MERCOSUR CET. Argentina's MFN applied tariff rate averaged 10.3 percent for agricultural products and 14.3 percent for non-agricultural products in 2016 (latest data available). Argentina's simple average 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.

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 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, which can be found at: <http://www.mercosur.int/innovaportal/v/7661/2/innova.front/resoluciones-2016>.

According to MERCOSUR rules, any good introduced into any member country must pay 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 ratified the CCC. 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 at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/277958/norma.htm>.

Argentina has bilateral arrangements with Brazil and Uruguay on automobiles and automotive parts intended to provide preferential treatment among the three countries. Mexico and Argentina also have a separate bilateral trade agreement regarding automobiles and automotive parts.

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 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 is paid by the importer. If those products are then sold in Argentina, the normal VAT rate, which is 21 percent for most consumer and capital goods, is levied. 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.

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. Additionally, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. Some products are brought from outside Argentina to facilities in the SCA where they are taken apart and reassembled for sale inside Argentina in order to qualify for tax benefits. 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. Additionally, prior to 2017, imports of most electronics products were subject to a 35 percent import duty, while imports of electronic components were subject to a 12 percent duty, unless they were imported into the SCA to be used as production inputs. 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, and eliminated the 12 percent import duty on electronic components as of February 21, 2017. The list of products subject to Decree 117 can be found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-.274999/271971/norma.htm>.

On November 29, 2017, Argentina issued Decree 979, which eliminated internal taxes on electronic products such as cell phones, air conditioning devices, televisions, and microwaves, produced in Tierra del Fuego, and 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. For a list of goods that are not locally produced, see Annex 1 of the resolutions, found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263282/norma.htm>.

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 at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263955/norma.htm>.

Nontariff Barriers

Import Licenses

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 electronically detailed information 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 increase in the number of tariff lines subject to non-automatic licensing. As of November 2017, Argentina maintained non-automatic import license requirements on 12,414 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.

Customs Valuation

Argentina continues to apply reference values to several thousand products. Under this system, authorities establish benchmark unit (i.e., reference) prices for customs valuation purposes goods that originate in, or are imported from, specified countries. These reference prices are used to establish a price for dutiable value. Importers of affected goods must pay duties calculated on the reference value, unless they can prove that the transaction was conducted at arm's length.

Argentina also requires importers of any goods from designated countries, including the United States, that are invoiced below the reference prices to have the invoice validated by both the exporting country's customs agency and the appropriate Argentine embassy or consulate in that country. The Argentine government publishes an updated list of reference prices and covered countries, which can be found at: <http://www.afip.gov.ar/aduana/valoracion/valores.criterios.pdf>.

Certificates of Origin

Certificates of origin have become a key element in Argentine import procedures to enforce antidumping 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 product's certificate of origin must be certified 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 can be enforced arbitrarily. Information on how to obtain a certificate of origin can be found at: <https://www.argentina.gob.ar/solicitar-el-certificado-de-origen>.

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 \$25 of their orders. 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. Commercial courier shipments, and non-commercial courier shipments with a value higher than \$1,000 or a weight greater than 50 kilograms, must present an import declaration through a customs broker.

Pursuant to 2016 Joint Resolutions 4149-E 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 list of products affected and the ports of entry for those products can be found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/130000-134999/131/847/norma.htm>.

Used Capital Goods Imports

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. Such parties are generally not accustomed to importing and are not typically registered as importers.

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 time period during which the imported used capital good cannot be transferred (sold or donated) is 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, for use in domestic production lines are also eligible for the 25 percent import tariff reduction.

Used Goods for Consumption

Resolution 909/1994, issued by the then-Ministry of Economy, 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; aircrafts; and ships. The full list of restricted items can be found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/268328/norma.htm>.

Used Clothing Imports

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

Consumer Goods Price Control Program

In January 2014, the Argentine government launched a consumer goods price control program called “*Precios Cuidados*.” Under the program, participating businesses 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 5, 2018, the government extended the program through May 6, 2018 for 436 products. The full list of goods can be found at: <http://precioscuidados.gob.ar>.

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. The CNDC reported that it did not receive any complaints through the SEPA program in 2017.

EXPORT POLICIES

Export Tariffs

Argentina maintains export taxes on a range of products. Soybeans are taxed at 30 percent; soy flour and oil at 27 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. 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 on January 1, 2018. The export tax on biodiesel is established according to a formula that considers the international price of oil and national production, per Decree 1719/2012. On December 12, 2017, the government issued Decree 1025, which revoked Decree 1719 and established the biodiesel export tax at eight percent (up from zero percent) as of January 1, 2018.

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

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

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. On October 27, 2017, through Decree 848/2017, the government extended the ban for another 360 days. 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 presently 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 (UCESCI). 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.

On December 12, 2017, the government issued Joint Resolution 4370-E, which revoked export permit requirements for beef exports, effective on December 19, 2017.

SUBSIDIES

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 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 29, 2017, the government extended all three programs through April 1, 2018. The list of goods qualifying for each of the programs can be found at: <http://www.ahora12.gob.ar>.

Argentina provides full or partial VAT refunds to exporters of consumer goods, agricultural goods, industrial goods, and processed foods. The Ministry of Agroindustry maintains a list of qualifying agricultural products. The refund scheme was updated in December 2016 through Decree 1341. That decree provides 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 Ministry of Agroindustry. 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. In December 2017 and January 2018, through Decrees 1126/2017 and 01/2018, Argentina updated the list of eligible products and the

refund percentages associated with them. Decrees 1126/2017 and 01/2018 can be viewed at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305361/norma.htm> and <https://www.boletinoficial.gob.ar/#!DetalleNorma/177068/20180103>.

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. The preference applies to procurement by all government agencies, public utilities, and concessionaires. There is similar legislation at the sub-national (provincial) level. 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 is an observer of the GPA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Argentina remained on the Priority Watch List in the 2017 Special 301 Report. 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 laws, diminish the competitiveness of U.S. intellectual property (IP)-intensive industries in Argentina. During 2017, Argentina made progress in tackling the problem of street vendors selling counterfeit products within the City of Buenos Aires. Authorities also took significant action, including substantial seizures of illicit goods and key arrests, 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 situation for innovators in the pharmaceutical and agrochemical sectors also presents significant concerns. First, the scope of patentable subject matter is significantly restricted under Argentine law. Second, the patent pendency backlog continues to be excessive, although the creation (in collaboration with the United States) in March 2017 of a Patent Prosecution Highway, a fast-track procedure for patent applications granted by a foreign office, as well as digitization of internal procedures and the hiring of additional patent examiners, may help to address the backlog. Finally, there is no means of adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the government in conjunction with its lengthy and challenging marketing approval process. 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.

Decree 1914/2006 requires that Argentine collection management organizations (CMOs) pay audiovisual performers royalties for cable retransmission of motion pictures and television programs. However, some U.S. performers and film and television directors have reported that they have not received royalties collected by these organizations for retransmitted U.S. motion pictures and television programs.

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 that are 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

Beginning in early 2011, the Argentine insurance regulator (SSN) prohibited cross-border reinsurance. As a result, Argentine insurers have been able to purchase reinsurance only from locally-based reinsurers. Foreign companies without local operations have not been allowed to enter into reinsurance contracts except when the SSN determines there is no local reinsurance capacity.

In November 2016, SSN eased reinsurance restrictions to allow foreign companies to provide reinsurance up to 10 percent of the ceded premium, starting in January 2017. In May 2017, the SSN further eased the regulatory framework through Resolution 40422-E/2017, which allows local insurance companies to place a higher percentage of risk with foreign reinsurance companies, namely up to 50 percent of the ceded premium starting in July 2017, up to 60 percent by 2018, and up to 75 percent by 2019.

In November 2017, the SSN issued Resolution 41057-E/2017, amending the investment regime for insurance companies. The Resolution prohibits insurance companies from purchasing (directly or indirectly through mutual funds) short-term Central Bank debt instruments (locally known as Lebac) for their investment portfolios. The SSN justified its decision based on risk management, arguing that insurance companies frequently have longer term liabilities. The resolution allows insurance companies to invest in closed-end funds, mortgage-backed securities, and assets of Public-Private Partnerships.

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

Telecommunications

Competition

Telecommunication services are regulated by the Media Law and the Telecommunications Law. In 2015, Presidential Decree 267/2015 amended this law, imposing numerous burdensome restrictions on suppliers. In 2016, however, a second Presidential Decree (1340/2016) removed most of the restrictions imposed by the first decree. Although this remedied many of the competition issues created by the first decree, there remain unreasonable disparities in the regulation of satellite and terrestrial-based services under the Media Law and Telecommunications Law. In particular, terrestrial based providers can bundle services, whereas

satellite-based providers are prohibited from bundling their services with other Internet and telecommunications services offered by terrestrial-based providers. Decree 1340 grandfathered satellite television suppliers that already held licenses for information technology services to continue providing such services. However, without changes to the Media Law and Telecommunications Law to remove these regulatory disparities, there remains unnecessary 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 under negotiation.

Foreign Exchange

In November 2017, the government repealed, through Circular A 6,363, the obligation to convert hard currency earnings on exports of both goods and services to pesos in the local official foreign exchange market. This amendment completely lifted all previously existing exchange controls. Prior to repeal, the regulation had granted a maximum of 10 years for exporters to fulfill the requirement. In January 2017, Argentina issued Resolution 1, which eliminated a previous requirement that capital inflows into Argentina remain in the country for a minimum of 120 days.

Localization Measures

Argentina maintains certain localization measures aimed at encouraging domestic production. 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 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. In September 2017, the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolution 1/2017, which updated the list of goods that are tax exempt under the renewable energy regime and adjusted the technical criteria used to calculate the local content. Details on the resolution and Annex 1 can be found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/280000-284999/280171/norma.htm>

In November 2015, the government issued Resolution 1219, which went into effect in May 2016, requiring mobile and cellular radio communication equipment manufacturers operating in Tierra del Fuego to incorporate certain percentages of local content into their production processes and products, including batteries, screws, chargers, technical manuals, and packaging and labelling. 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. A detailed description of local content percentage requirements can be found at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/255494/norma.htm>.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$14.6 billion in 2017, a 15.0 percent increase (\$1.9 billion) over 2016. U.S. goods exports to Australia were \$24.6 billion, up 11.0 percent (\$2.4 billion) from the previous year. Corresponding U.S. imports from Australia were \$10.1 billion, up 5.7 percent. Australia was the United States' 16th largest goods export market in 2017.

U.S. exports of services to Australia were an estimated \$22.50 billion in 2017, and U.S. imports were \$7.6 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$44.7 billion in 2015 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$17.6 billion.

U.S. foreign direct investment (FDI) in Australia (stock) was \$165.3 billion in 2016 (latest data available), a 4.2 percent increase from 2015. U.S. direct investment in Australia is led by nonbank holding companies, mining, and manufacturing.

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.

In addition to the United States, Australia 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. It is also a participant in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Regional Comprehensive Economic Partnership trade negotiations, and the Pacific Agreement on Closer Economic Relations (PACER Plus) among Pacific Island nations. Australia has announced plans to launch FTA negotiations with the European Union and with the Pacific Alliance.

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 August 2013, an audit team from FSANZ conducted an inspection of U.S. production and processing facilities. In its final report, FSANZ found that the United States has comprehensive and well-established controls to prevent the introduction and amplification of the BSE agent within the cattle population and to prevent contamination of the human food supply with the BSE agent. It reported that beef imports from the United States are safe for human consumption and recommended Category 1 status under Australia's import requirements, indicating that beef from the United States meets the negligible BSE risk requirements of the World Organization for Animal Health (OIE) and can be imported subject to specific import conditions. U.S. and Australian officials are coordinating requirements for export certificates for heat-treated, shelf-stable beef products from the United States, after which the export of these products from the United States to Australia will be able to resume.

For fresh (chilled or frozen) beef and beef products, the Australian government in December 2015 announced the start of a review of its import requirements for three countries that have applied for eligibility to export to Australia: the United States, Japan, and the Netherlands. This review considered fresh (chilled or frozen) beef and beef products such as meat, bone, and offal of cattle, buffalo, and bison. The review concluded in August 2017, and the U.S. Department of Agriculture (USDA) is reviewing the final assessment. The next step will be to clarify with Australia the process it will follow to update its import regulations and engage the United States on the terms and conditions for U.S. fresh beef and beef product exports to Australia.

Pork

Pork and pork products are currently the top U.S. agricultural export to Australia, valued at \$195 million in 2017. However, due to concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multisystemic wasting syndrome (PMWS), the importation of fresh/chilled pork and bone-in products is 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. In addition, the OIE approved an international standard for PRRS in May 2017. Australia has requested additional scientific information from the United States. In December 2017, USDA Animal and Plant Health Inspection Service (APHIS) sent a scientific review paper on PRRS with a request that Australia reopen 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 currently 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 must be cooked to a minimum core temperature of 74°C for 165 minutes or the equivalent. This temperature requirement does not permit importation of cooked product that is suitable for sale in restaurants or delicatessens, thus limiting commercial opportunities.

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 public consultation, which ended in November 2016, the department is seeking further information from the United States on the prevalence of infectious bursal disease virus (IBDV) in U.S. turkeys. The department also is reviewing the definition of cooking after submissions received indicated that time and temperature requirements for cooking may be impractical for turkey products intended for export.

USDA APHIS and the U.S. National Turkey Federation are coordinating a study 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 the resolution of this issue as a high priority and continues to work with Australia to gain meaningful commercial market access for cooked turkey meat.

Plant Health

Apples

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 a systems approach. 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.

GOVERNMENT PROCUREMENT

Under the United States-Australia 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 continues to pursue accession to the World Trade Organization's (WTO) plurilateral Agreement on Government Procurement (GPA). Australia presented a second revised offer to the GPA Committee in June 2017. At the completion of the June committee meeting, the WTO reported that Members viewed Australia's offer as "strong" or "very strong," and that work to finalize Australia's accession had "intensified and is nearing final stages."

Certain Australian federal and state government procurement rules introduced in 2017 that appear to favor local suppliers have caused some international concerns. The new 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 "[the Queensland] Cabinet has agreed the State Government would no longer be constrained or bound by free trade agreements that have seen jobs go off-shore or interstate."

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 United States-Australia 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 TV 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 TV 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.

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\$252 million (approximately \$197 million) as of January 1, 2016. Based on advice from the FIRB, Australia's Treasurer may deny or place conditions on the approval of particular investments above the threshold on national interest grounds.

Under the United States-Australia 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\$1,094 million (approximately \$855 million) as of January 1, 2016. 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.

A number of recent 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.

BARRIERS TO DIGITAL TRADE

The United States-Australia 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).

In June 2017, Australia passed legislation to collect goods and services tax (GST) on previously exempt imported goods purchased online with a value less than A\$1,000,000 (approximately \$780 million). The legislation, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, places the onus of GST collection and remittance on the overseas vendor. Only vendors with annual sales to Australian customers in excess of A\$75,000 million (approximately \$59,000 million) are subject to the legislation.

The new tax arrangements will take effect on July 1, 2018, and apply to overseas merchants, online marketplaces, and re-deliverers. No regulation impact analysis was undertaken prior to the legislation being passed, meaning that a post-implementation review will likely be undertaken within the first two years.

The review will assess the effectiveness of the legislation, including compliance and alternative approaches to taxing online goods. As the laws have not taken effect, it remains unclear the effects they will have on U.S. companies and exports.

BAHRAIN

TRADE SUMMARY

The U.S. trade balance with Bahrain shifted from a goods trade surplus of \$131 million in 2016 to a goods trade deficit of \$89 million in 2017. U.S. goods exports to Bahrain were \$907 million, up 0.9 percent (\$8 million) from the previous year. Corresponding U.S. imports from Bahrain were \$996 million, up 29.7 percent. Bahrain was the United States' 80th largest goods export market in 2017.

U.S. exports of services to Bahrain were an estimated \$271 million in 2016 (latest data available) and U.S. imports were \$1.0 billion. Sales of services in Bahrain by majority U.S.-owned affiliates were \$319 million in 2015 (latest data available), while sales of services in the United States by majority Bahrain-owned firms were \$1.5 billion.

U.S. foreign direct investment (FDI) in Bahrain (stock) was \$548 million in 2016 (latest data available), a 3.4 percent decrease from 2015.

FREE TRADE AGREEMENTS

The United States-Bahrain Free Trade Agreement

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in industrial and consumer products and trade in most agricultural products became duty free. Duties on other products were phased out gradually over the first ten years of the Agreement. The FTA also provided a ten-year transitional period for preferential tariff treatment of certain quantities of textiles and apparel that did not meet the otherwise applicable requirements, in order to assist U.S. and Bahraini producers in developing and expanding business contacts. This provision expired on July 31, 2016, and now textiles and apparel must generally be made from U.S. or Bahraini yarn or fabric to benefit from preferential tariffs under the FTA. The United States-Bahrain Bilateral Investment Treaty, which took effect in May 2001, covers investment issues between the two countries.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a “GCC Guide for Control on Imported Foods” in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC's failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

IMPORT POLICIES

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, and tobacco products, implementation varies by Member State. Bahrain began to levy the taxes on December 30, 2017. U.S. beverage producers report 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.

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.

GOVERNMENT PROCUREMENT

Chaired by the Minister of Housing, the Tender Board oversees all tenders and purchases valued at BD 10,000 (\$26,525) or more. 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 have reported that they have faced prolonged and detrimental issues with the tendering process related to GCC-funded projects. The United States continues to monitor Bahrain's procurement system to ensure compliance with its trade obligations.

Bahrain is an observer of but not a signatory to 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 TV, and has launched several public awareness campaigns regarding IPR piracy. However, many counterfeit consumer goods continue to be sold openly.

As GCC Member States explore further harmonization of their IPR regimes, the United States will continue to engage with GCC institutions and the Member States and to provide technical cooperation and capacity building programs on IPR policy and practice, 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 \$4.2 billion in 2017, a 15.6 percent decrease (\$782 million) over 2016. U.S. goods exports to Bangladesh were \$1.5 billion, up 61.7 percent (\$559 million) from the previous year. Corresponding U.S. imports from Bangladesh were \$5.7 billion, down 3.8 percent. Bangladesh was the United States' 68th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Bangladesh (stock) was \$616 million in 2016 (latest data available), a 9.2 percent increase from 2015.

IMPORT POLICIES

Bangladesh's import policies are outlined in the Import Policy Order 2015-2018 issued by the Ministry of Commerce. The Import Policy Order has two lists, a 'List of Controlled Goods' and 'List of Prohibited Goods'.

All imports, except for capital machinery and raw materials for industrial use, must be supported by a letter of credit. A letter of credit authorization form and a cash bond (ranging from 10 percent to 100 percent of the value of the imported good) are also required.

Foreign exchange is controlled by the Bangladesh Bank – the central bank – in accordance with Foreign Exchange Control policies.

Tariffs

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

Bangladesh levies tariffs at four primary levels of imported goods and publishes the applied rates at: <http://customs.gov.bd/portal/services/tariff/index.jsf>. 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 quantity can be carried by passengers during travel and are not subject to tariffs; however, samples are subject to tariffs if sent by courier. USAID's "Bangladesh Trade Facilitation Activity" supported the government's efforts to develop the Enhanced Customs Website (<http://www.bangladeshcustoms.gov.bd/>) that provides a one-stop shop for importers and exporters to calculate rates and access any required forms.

The average MFN applied tariff rate is 14.78 percent with average rates of 16.9 percent for agricultural products and 13.4 percent for non-agriculture products in 2016. According to the 2017-2018 Bangladesh Customs Tariff Schedule, the maximum MFN applied tariff rate is 25 percent. Products subject to rates of from 5 percent to 25 percent include general input items, basic raw materials, and intermediate and finished goods. Bangladesh provides concessions for the import of capital machinery and equipment, as well as for specified inputs and parts, which makes determinations of tariff rates a complex and non-transparent process. Other charges applicable to imports are an advance income tax of 5 percent; a value-added tax (VAT) of zero to 15 percent, with exemptions for input materials previously mentioned; and a supplementary duty of zero to 350 percent, which applies to certain new vehicles or luxury items such as cigarettes, alcohol, and perfume.

In the fiscal year 2017-2018, the government of Bangladesh has imposed export duties of 4 percent to 25 percent on 17 product categories, including rice bran, tobacco, cigarettes, liquefied petroleum gas cylinders (capacity below 5,000 liters), cotton waste, and ceramic bricks.

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.

Nontariff Measures

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

Import Licenses

In general, documents required for importation include a letter of credit authorization form, a bill of lading or airway bill, commercial invoice or packing list, and certificate of origin. For certain imported items or services, additional certifications or import permits related to health, security or other matters are required by the relevant government agencies. Reduced documentation requirements apply for the public sector.

Bangladesh imposes registration requirements on commercial importers and private industrial consumers. In some cases, the registrations specify maximum values of imports. 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 weavers' associations engaged in the preservation of classical Bangladesh weaving techniques; and the Bangladesh Investment Development Authority (BIDA) (formerly the Board of Investment), 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 within 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. Initial registration fees and annual renewal fees vary depending on the category. For example, for the sixth category, which applies if annual imports exceed approximately \$640,000, the initial registration fee is approximately \$770 and the renewal fee is approximately \$385.

An importer must apply in writing to the concerned 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. An importer may not open a letter of credit in excess of the maximum value

of annual imports.

Indentors (representatives of foreign companies or products compensated on a commission or royalty basis) and exporters must also pay registration and renewal fees, of approximately \$500 and \$250, and \$90 and \$60, respectively.

Double Fumigation of U.S. Origin Cotton

Bangladesh requires imported U.S. cotton be fumigated at the Chittagong Port for boll weevil. U.S. cotton exporters and Bangladeshi cotton importers have described this requirement as unnecessary because U.S. cotton is already fumigated for boll weevil in the United States. This additional fumigation adds 1 to 2 cents to the cost of each imported bale, which decreases demand for U.S. cotton and increases costs for Bangladeshi importers. The United States continues to press the government of Bangladesh to eliminate unnecessary import restrictions for cotton.

Pharmaceutical Products

From 2012 to October 2017, U.S. pharmaceutical companies reported that they were denied access to the Bangladesh market due to informal guidance from the Director General of the Drug Administration (DGDA) and the Ministry of Commerce to limit imports of drugs that can be produced domestically. U.S. and international pharmaceutical companies are normally required to request import licenses called “indents,” which are reviewed by the DGDA’s “Standing Committee for Import” composed of DGDA officials and domestic pharmaceutical producers. The DGDA began decreasing import volumes beginning in 2015 and by October 2017 had blocked all imports of certain pharmaceutical products that competed with domestic producers. The DGDA began approving importation of certain drugs in October 2017, but U.S. pharmaceutical companies remain concerned that this resolution is only temporary.

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). The CPTU was established in April 2002 as a unit within the Implementation Monitoring and Evaluation Division (IMED) of the Ministry of Planning. A Director-General who reports directly to the Secretary of IMED leads the CPTU. The government of Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are common. Bangladesh recently launched a national electronic Government Procurement portal at <http://eprocure.gov.bd>, 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 noted 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 not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although Bangladesh has shown improved enforcement of intellectual property rights (IPR), counterfeit goods continue to be widely available, and music and software piracy are widespread. U.S. companies and other international companies in the software, publishing, clothing, and consumer product industries complain that inadequate IPR enforcement damages their business prospects in Bangladesh and, in certain cases, damages them in other markets due to pirated physical goods sourced from Bangladesh. Bangladesh is in the initial stages of formulating a national intellectual property policy, which holds promise in

addressing the challenges facing IPR holders in Bangladesh, but the effort has unfortunately not made measurable progress during the past year.

Foreign software companies face significant challenges registering and enforcing their copyrights in Bangladesh. Although recognition for certain foreign country copyrights was granted as a result of the annual bilateral trade talks between the United States and Bangladesh, the Trade and Investment Cooperation Framework Agreement, Bangladesh has not yet instituted a notification system using its official gazette that would make enforcement of these rights practicable. The United States Government, including the U.S. Patent and Trademark Office and the U.S. Department of Justice, continue to provide technical assistance to Bangladesh on intellectual property rights protection and enforcement.

SERVICES BARRIERS

Foreign companies are allowed to provide services in Bangladesh except in sectors that are subject to administrative licensing processes. However, new market entrants face significant restrictions in most regulated commercial fields (including telecommunications, banking, and insurance), some of which are targeted towards U.S. and other international companies. 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 (control is defined as the ability to control the board of directors or a majority of the directors). In 2016, the Bangladesh Investment Development Authority (BIDA) was formed from the merger of the Board of Investment and the Privatization Commission. BIDA's goal is to push for implementation of a One-Stop Service Act (OSSA) and to become Bangladesh's one-stop private investment promotion and facilitation agency. BIDA expects to launch the "One-Stop Service Center" on a pilot basis by mid-2018, but OSSA is still awaiting parliamentary approval.

Telecommunications

In 1997 the government of Bangladesh opened telecommunications services to increased competition by removing the sector from the "Reserve List" and established the Bangladesh Telecommunication Regulatory Commission (BTRC) as the regulatory authority in 2001. The BTRC was established to facilitate dependable telecommunication services, with the mobile sector as its primary focus. Yet BTRC's licensing practices limit foreign participation in the telecommunications industry. Furthermore, 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 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, 1 percent of their revenue into a social obligation fund, and approximately \$633,000 as an annual licensing fee. A tax of approximately \$1.25 is imposed on the sale of SIM cards, and a three percent supplementary duty is applied to charges for phone usage. Handsets are subject to a 15 percent import duty. Under the 2013-2014 Finance Act, the corporate income tax rate for listed telecommunications companies was raised to 40 percent from the prior rate of 35 percent, while the corporate income tax rate for mobile service providers that are not publicly listed in the Bangladesh capital markets is 45 percent. Taxation of the mobile industry represents the largest source of tax revenue for the government of Bangladesh.

The high tax rates adversely affect the telecommunication industry's growth and expansion. Moreover, the National Board of Revenue has sought to apply new telecommunication tax policies retroactively. For example, government regulators have sought to levy taxes on mobile providers that sold SIM cards between July 2009 and December 2011 without providing regulators with the notice called for under later

regulations.

In addition, the BTRC is in the process of drafting new mobile network tower sharing guidelines. However, the process for drafting these guidelines has been delayed for nearly four years. In the latest draft, foreign companies' shareholding limit was raised to 70 percent from the previous limit of 40 percent. The revised draft guidelines will also allow four companies to manage mobile towers in Bangladesh, but will limit mobile phone operators' ownership of tower infrastructure.

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, but the government will consider equity participation of up to 100 percent of the overall shareholdings.

Insurance

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, notwithstanding the Insurance Act. The government of Bangladesh is not permitting new exclusively foreign-owned companies into the insurance market. Rather, foreign insurance firms can hold a stake of up to 60 percent 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 commercial banks to market and sell life insurance products. The Bangladesh Bank has raised concerns about potential financial exposure, but U.S. companies assess there is no risk for foreign-owned commercial banks because the U.S. parent 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.

National Payment Switch

In December 2012, the government began phasing in a National Payment Switch of Bangladesh (NPSB) 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. NPSB is owned by Bangladesh Bank, which is also the regulator of financial transactions.

Initially, only ATM transactions were routed through the NPSB. However, Bangladesh intends to expand the system and, at present, seems to be requiring certain point of sale transactions to be routed through the system. In practical terms, through this expanding prohibition on cross-border processing, the NPSB is limiting the ability of global suppliers of electronic payment services to participate in the market. On August 24, 2017, the Bangladesh Bank issued formal guidance requiring financial institutions to use the NPSB to process domestic ATM and POS transactions starting December 31, 2017. The Bangladesh Bank previously provided informal guidance to domestic banks encouraging them to use the NPSB, but the August 24 circular is the first time the Bank has formally instructed domestic banks that they must use the NPSB. Bangladesh Bank's position as both regulator and market participant creates a formidable barrier for competitors to the NPSB. There are initial indications that the Bangladesh Bank will postpone implementation of the NPSB requirements for at least one year.

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. Banks and payment networks have requested that the Bangladesh Bank review its policies on the NPSB and hold discussions with all stakeholders to address their security concerns. The United States has passed concerns to the Bangladesh Bank and continues to encourage a constructive dialogue between the central bank and U.S. companies.

Broadcasting

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 fee on revenue from licensed channels.

FOREIGN DIRECT INVESTMENT

Foreign investors can establish, own, operate, and dispose of interests in most types of business enterprises in Bangladesh. Four sectors are reserved for government investment and therefore closed to both foreign and domestic private sector activity: 1) arms and ammunition and other defense equipment and machinery; 2) forest plantation and mechanized extraction within the bounds of reserved forests; 3) nuclear energy production; and 4) security printing (currency and post stamps). In addition, there are 17 controlled sectors in which prior government approval is required prior to an investment being made. These include banking and insurance, telecommunications, and the exploration, extraction, and supply of mineral resources, including oil and gas.

While discrimination against foreign investors is not widespread, the government frequently promotes local industries and some discriminatory policies and regulations do 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 on the basis of geopolitical concerns.

OTHER BARRIERS

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. Frequent transfers of top- and mid-level officials in various government agencies are disruptive and prevent timely implementation of both strategic reform initiatives and routine duties.

While repatriation of profits and external payments is allowed under current law, U.S. and other international investors have raised concerns that outbound transfers from Bangladesh remain cumbersome and that approvals to repatriate profits or dividends can be subject to significant delays. U.S. and other international investors have also raised concerns that the National Board of Revenue has arbitrarily reopened sometimes decades-old tax cases, targeting in particular cases involving multinational companies.

Extortion of money from businesses by individuals claiming political backing is common in Bangladesh. Other impediments to business include frequent transportation blockades called by political parties, which can both keep workers away and block deliveries, resulting in productivity losses. Vehicles and other property are at risk from vandalism or arson during such blockades, and looting of businesses has also occurred.

Land disputes are common, and both U.S. companies and citizens have filed complaints about fraudulent land sales. For example, sellers fraudulently claiming ownership have transferred land to good faith purchasers while the actual owners were living outside of Bangladesh. In other instances, U.S.-Bangladeshi

dual citizens have purchased land from legitimate owners only to have third parties make fraudulent claims of title to extort settlement compensation.

Corruption remains a serious impediment to investment in Bangladesh. While the government has established legislation to combat bribery, embezzlement, and other forms of corruption, enforcement is inconsistent. While the 2007-2008 caretaker government attempted to address the culture of corruption in Bangladesh, including by strengthening the role of the Anti-Corruption Commission (ACC) continuous efforts to ease public procurement rules and proposals to curb the independence of the ACC have undermined limited efforts toward institutional reform. 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.

Concerns over industrial relations practices and the safety of infrastructure have discouraged greater investment and trade. The rapid growth of the ready-made garment sector in in the past two decades led to unregulated expansion in the number and size of factories. The collapse of the Rana Plaza building and the death of 1,129 workers in April 2013 highlighted health and safety concerns in the country's factories and the lack of effective oversight and regulation. Bangladesh's eligibility for the U.S. Generalized System of Preferences (GSP) was suspended in June 2013 as a result of failure to meet the program's mandatory criteria regarding internationally recognized worker rights. Recent initiatives by the government of Bangladesh, international garment buyers, and the International Labor Organization have led to improvements in factory safety standards and transparency over the past four years, although remediation of safety issues has progressed unevenly. A lack of meaningful progress towards labor law reform overall, including in the country's export processing zones, has also been a major point of concern for Bangladeshi and international stakeholders. Limited protections for labor organizations, weak enforcement of existing protections, and long delays in the labor court system have led to a deep distrust of sanctioned association and bargaining processes, and a reliance on unofficial or "wildcat" industrial actions.

BOLIVIA

TRADE SUMMARY

The U.S. trade balance with Bolivia shifted from a goods trade deficit of \$318 million in 2016 to a goods trade surplus of \$29 million in 2017. U.S. goods exports to Bolivia were \$595 million, down 9.5 percent (\$63 million) from the previous year. Corresponding U.S. imports from Bolivia were \$566 million, down 42.0 percent. Bolivia was the United States' 88th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Bolivia (stock) was \$546 million in 2016 (latest data available), a 20.0 percent increase from 2015.

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).

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 to support this requirement 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 calls for mandatory labeling. The Bolivian government has yet to issue regulations to implement the Productive Revolution Law. However, on October 15, 2012 the Bolivian government passed the "Mother Earth Law" (*Ley de Madre Tierra*) that calls for the phased elimination of all genetically modified products from the Bolivian marketplace. Implementing regulations have not yet been issued due in part to objections from Bolivian industry.

Tariffs

Bolivia's MFN tariff structure consists of seven rates ranging from zero to 40 percent. In 2017, Bolivia's simple average applied tariff was 11.1 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; five percent for 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 also allows the government to raise tariffs if necessary to protect domestic industry, or alternatively, to lower tariffs if supplies run short.

Import Restrictions/Licenses

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 2017, 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.

Other products require prior authorization before they can be imported. In 2017, prior authorization was required for 719 ten-digit tariff lines. Prior authorization, similar to an import prohibition, is generally presented as a way to protect human and animal health or life, or 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. Prior authorizations may be automatic or non-automatic, and 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.

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 peasant 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 peasant 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.

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 not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Bolivia was on the Watch List in the 2017 Special 301 report. The report noted that challenges continue with respect to adequate and effective IPR 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 persist with respect to widespread piracy and counterfeiting. The report encouraged Bolivia to improve its weak protection of IPR.

INVESTMENT BARRIERS

Bolivia's 2009 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 government of Bolivia emphasizes public ownership of strategic enterprises. In an effort to control key sectors of the economy, the Bolivian 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 the 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 \$7.6 billion in 2017, a 88.7 percent increase (\$3.6 billion) over 2016. U.S. goods exports to Brazil were \$37.1 billion, up 23.2 percent (\$7.0 billion) from the previous year. Corresponding U.S. imports from Brazil were \$29.4 billion, up 12.9 percent. Brazil was the United States' 10th largest goods export market in 2017.

U.S. exports of services to Brazil were an estimated \$25.3 billion in 2017 and U.S. imports were \$6.5 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$42.2 billion in 2015 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$1.8 billion.

U.S. foreign direct investment (FDI) in Brazil (stock) was \$64.4 billion in 2016 (latest data available), a 11.9 percent increase from 2015. U.S. direct investment in Brazil is led by manufacturing, finance/insurance, and nonbank holding companies.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Telecommunications – Acceptance of Test Results

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, rather than allowing testing by a facility certified by an independent certification body. The only exception is in cases where the equipment is too large or too costly to transport to the designated testing facilities. Because of these requirements, 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, which, if adopted, would replace existing regulations that govern the conformity assessment process for telecommunications equipment in Brazil (Resolution 242/2000 and 323/2002). The United States is monitoring developments and analyzing the potential effects of the proposed changes.

The United States has urged Brazil to implement the Inter-American Telecommunication Commission (CITEL) Mutual Recognition Agreement (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 for Toys

In December 2016, Brazil's National Institute of Metrology, Quality, and Technology (INMETRO) issued a final measure providing for testing and conformity assessment requirements for toys (Ordinance

563/2016). The measure will enter into force on December 30, 2018. Since July 2014, INMETRO had been developing new testing requirements (Ordinances 310/2014; 489/2014; 428/2015; and 597/2015), which are intended to improve conformity assessment procedures and consolidate all toy-related certification requirements into a single measure. Under previous regulations, toy manufacturers were required to register manufacturing facilities; the new regulation 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. This system also requires U.S. exporters to submit commercially sensitive and confidential business information.

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 definition of wine coolers and wine cocktails is overly trade-restrictive and does 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 has raised concerns with Brazil regarding the drafts of this measure at TBT Committee meetings and submitted detailed written comments as part of Brazil’s 2017 WTO Trade Policy Review. We will continue to raise concerns and seek clarifications as Brazil works on this measure in 2018.

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, as U.S. pork producers maintain stringent biosecurity protocols that have virtually eradicated the incidence of trichinae in U.S. commercial herds. In August 2016, the U.S. Department of Agriculture proposed a U.S. export certificate for fresh pork and pork products to the Ministry of Agriculture, Livestock, and Food Supply (MAPA). The United States has raised this proposal in various engagements with Brazil, including in November 2017. We will continue to work with MAPA in 2018 to gain approval of the proposed export certificate.

IMPORT POLICIES

Tariffs

Brazil 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 to 35 percent *ad valorem* and averages 11.5 percent. The CET allows for a limited number of exceptions, but

Brazil's import tariffs generally follow the MERCOSUR CET. Brazil's MFN applied tariff rate averaged 10 percent for agricultural products and 14.1 percent for non-agricultural products in 2016 (latest data available). Brazil's simple average 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 industrial 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 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 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 decision, Brazil is permitted to maintain 100 exceptions to the CET until December 31, 2021. 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 a 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 Common Market Council (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 ratified the CCC. Brazil's executive branch continues to work on draft legislation to ratify the CCC.

Wheat Tariff-Rate Quota

As part of commitments made during Uruguay Round negotiations and subsequent accession to the WTO in 1995, Brazil agreed to establish 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, 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. Since then, Brazil has applied a 10 percent tariff on imported wheat from non-MERCOSUR trading partners, including the United States, but could increase this rate at any time to its WTO bound rate of 55 percent. The United States continues to seek predictable and meaningful access to the Brazilian market for U.S. wheat producers and exporters.

Ethanol Tariff-Rate Quota

In September 2017, Brazil implemented a 24-month TRQ on ethanol imports, whereby imports above a 600 million liter quota are subject to a 20 percent tariff. 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.

Nontariff Barriers

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 the 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.

For example, effective January 1, 2013, Brazil instituted a “temporary” regime for a reduction in the Industrial Product Tax (IPI) that made preferential tax rates available to locally produced vehicles, provided that manufacturers comply with a series of local content and other requirements. This program expired at the end of 2017. As part of the program, the baseline IPI on all vehicles had been revised upward by 30 percent, which is equivalent to the level applied to imported vehicles under the prior regime. However, those vehicles meeting certain levels of local content, fuel efficiency and emissions standards, and required levels of local engineering, research and development, or labeling standards, received tax breaks that could offset the full amount of the IPI. As a result, imported automobiles faced a potential 30 percent price disadvantage compared to equivalent vehicles manufactured in Brazil even before import duties are levied.

On August 31, 2015, Brazil issued Provisional Measure 690/2015 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* 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.

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.

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

Import Licenses and Customs Procedures

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 license 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 license 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.

U.S. companies continue to complain of burdensome documentation requirements for the import of certain types of goods that apply even if imports are on a temporary basis. In addition, 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 existing products and more than six months for new products.

SUBSIDIES

The Plano Brasil Maior (Greater Brazil Plan) industrial policy offers a variety of tax, tariff, and financing incentives to encourage local producers and production for export. For example, Brazil allows tax-free purchases of capital goods and inputs to domestic companies exporting over 50 percent of their output. Similarly, the Reintegra program, launched in December 2011 as part of Plano Brasil Maior, exempted from certain taxes exports of goods covering 8,630 tariff lines, 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 and was reintroduced in July 2014 through Law 13043/2014. The program was amended in September 2014 through Decree 8304 to add sugar, ethanol, and cellulose, among others, to the list of eligible products. The Reintegra program was amended again in February 2015 (Decree 8415) and October 2015 (Decree 8543), establishing that throughout most of 2015, exporters received one percent of gross receipts from exports in tax refunds, dropping to 0.1 percent for 2016, and increasing to two percent for 2017.

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 2016 (latest data available), Brazil's National Bank for Economic and Social Development (BNDES) provided approximately R\$88.3 billion (approximately \$27.8 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, however; financing dropped 27 percent in 2015, and a further 35.1 percent in 2016 (to 2008 levels).

BNDES applies a local content requirement of 60 percent for loans for large scale solar power systems. A number of complex state-specific tax incentives distort the real price of distributed generation solar energy systems.

Another BNDES program, 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 funding is used to finance capacity expansions and equipment purchases in industries such as steel and agriculture. BNDES also provides preferential financing for wind and solar farm development, contingent upon progressively more stringent local content requirements. 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. In 2016, BNDES funding for FINAME was approximately R\$10.59 billion (approximately \$3.33 billion), 57.4 percent less than in 2015.

In 2017, the Brazilian Congress approved a change to BNDES' preferential long-term lending rate. The new rate will be phased-in over five years starting in January 2018 and will be linked to inflation-indexed National Treasury bonds. Due to BNDES' previous subsidized long-term lending rate, BNDES controlled nearly the entire long-term lending market in Brazil. Under the new rate, private banks should be able to better compete with BNDES.

For the crop season of 2016/17 (October 1, 2016 through September 30, 2017), BNDES announced that it would provide subsidized funds of R\$17.4 billion (approximately \$5.45 billion) for corporate and family agriculture. This was an increase of 18 percent from the 2015/16 crop year. At least 43 percent of these funds were part of the "MODERFROTA" program, which finances the acquisition of domestically-produced agricultural machinery at subsidized interest rates that vary from 8.5 percent to 10.5 percent per year. An additional 11 percent was allocated to finance the working capital of Brazilian agricultural cooperatives.

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 such that they 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). 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 local content requirements 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 shipped to specified regions in Brazil or exported. The primary difference between these two programs is that the PEP payment goes to the first purchaser of the commodity while PEPRO payments are made 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 commodity to be tendered and the approved destinations for that product, including export destinations.

From 2003 through 2017, approximately 46 million metric tons of commodities received assistance under PEPRO at a cost of R\$ 4.495 billion (approximately \$1.36 billion). Most of that assistance was for cotton, corn, soy and wheat. In 2017, PEPRO payments of R\$ 485 million (approximately \$ 150.6 million dollars) were disbursed to corn and wheat producers. The program supported 7.3 million metric tons of corn and 453,000 metric tons of wheat. From 2003 to 2017, approximately 42 million metric tons of commodities received assistance under PEP at a cost of R\$ 3.76 billion (approximately \$ 1.17 billion). The majority of this assistance was allocated to corn and wheat. In 2017, PEP payments of R\$ 105 million (approximately \$32.6 million) supported 1.93 million metric tons of corn and 18,000 metric tons of wheat. 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 closely monitor their use.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the Agreement on Government Procurement (GPA), but it became an observer of the GPA 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 often are more successful in subcontracting with larger Brazilian firms.

Brazil gives 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 their 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. In 2012, Brazil’s Ministry of Science, Technology and Innovation issued the “Bigger IT Plan,” which establishes a process for the government to evaluate and certify that software products are locally developed in order to qualify for price preferences. Presidential Decree 8.135, adopted in 2013, imposes cyber auditing requirements on IT systems used by Brazilian government entities. The decree continues to be implemented in stages and is a concern for U.S. technology companies because of the potentially prohibitive costs of having a system certified 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 it has not yet issued an alternative measure.

In 2003, the Brazilian National Oil and Gas Regulatory Agency (ANP) created minimum local content requirements (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 commonly ranging between 37 percent to 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, were reduced to 50 percent as well.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Brazil remained on the Special 301 Watch List in 2017. 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 in Brazil online and in physical markets. Increased emphasis on enforcement at the tri-border region 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 identified in the past as an effective entity for carrying out public awareness and enforcement campaigns, but the CNCP appeared to be nonoperational in 2017 and did not deliver the same kinds of achievements as in recent years.

Brazil has taken steps to address a backlog of pending patent and trademark applications, including the 2016 implementation of a Patent Prosecution Highway pilot program for oil and gas industry applications and the hiring of 210 examiners, but considerable delays remain, with reported pendency averages of more than two and a half years for trademarks and 10.2 years for patents. ANVISA’s duplicative review of pharmaceutical patent applications has been a longstanding concern because it lacks transparency, exacerbates delays of patent registrations for innovative medicines, and has prevented patent examination by the National Institute of Industrial Property (INPI). In April 2017, Brazil announced an agreement between INPI and ANVISA, which is intended to expedite the examination of pharmaceutical patent applications and redefines ANVISA’s role in that process, though the underlying law (Article 229c of the Intellectual Property Law) that allows ANVISA to review patents remains in force.

Further, while Brazilian law and regulations provide for protection against unfair commercial use of undisclosed test 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 and Broadcasting

Brazil imposes a fixed tax on each foreign film released in theaters, on foreign home entertainment products, on foreign programming for broadcast television, and on 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 Services

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 used for express delivery shipments. This flat rate is higher than duties normally levied on goods arriving through regular mail, putting express delivery companies at a competitive disadvantage. The Simplified Customs Clearance process limits shipments for commercial purposes to \$100,000 per importer per year. Moreover, Brazilian Customs has established maximum per-shipment value limits of \$10,000 for exports and \$3,000 for imports sent using express services. Express delivery companies may transport shipments of higher value, but such shipments are subject to the formal import and declaration process.

Financial Services

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. Foreign investors receive national tax treatment in relation to operations in the financial and capital markets.

Through Resolutions 225/2010 and 232/2010, the Brazilian National Council on Private Insurance (CNSP) restricts foreign insurers' participation in the Brazilian market. 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. In August 2010, Brazil passed Complementary Law 137/2010, an updated form of Complementary Law 126/2007, to liberalize entrance into national markets for foreign firms. Under Complementary Law 137/2010, for a foreign company to qualify as an admitted reinsurer, it must have a representation office in Brazil; meet the

requirements of Complementary Law 126/2007; keep an active registration with Brazil's insurance regulator, the Superintendence 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.

In July 2015, under CNSP Resolution 325, the Brazilian government announced a significant relaxation of the restrictions on foreign insurers' participation in the Brazilian market, and in December 2017, restrictions on risk transfer operations involving companies under the same financial group were eliminated. Under the new rules, the mandatory cession requirement to purchase a minimum percentage of reinsurance has been revoked and there is no longer a limitation or threshold for intra-group cession of reinsurance to companies headquartered abroad that are part of the same economic group. Rules on preferential offers to local reinsurers, which are set to decrease in increments from 40 percent in 2016 to 15 percent in 2020, were maintained.

Telecommunications

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. As a condition of the 2012 auction for 2.5 GHz and 450 MHz radio spectrum, ANATEL required wireless carriers to ensure that 50 percent of the infrastructure, including software, installed to supply the licensed service met the local content requirements of the PPB (discussed above in the Subsidies section). ANATEL also required wireless carriers to use a minimum percentage of technology developed in Brazil, starting with 10 percent in 2012, 15 percent in 2015, and 20 percent after 2017. ANATEL extended these requirements to the 700 MHz spectrum in an auction held in 2014. Because of these eligibility requirements, which favor local manufacturing and technology development, no U.S. telecommunication companies submitted bids in the 2012 and 2014 auctions. In its most recent auction for the 1.8, 1.9, and 2.5 GHz spectrums, in November 2015, ANATEL had the stated goal of increasing competition and attracting smaller carriers, and did not include specific local content requirements. However, in the case of equivalent bids, the auction rules provided a preference for a bid utilizing services, equipment, or materials produced in Brazil, including those with national technology.

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 local content requirements favoring Brazilian goods, is 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 panel's report is pending appeal before the WTO Appellate Body.

Satellites

In 2004, ANATEL issued Resolution 386, which requires foreign satellite operators to acquire landing rights and pay annual landing rights fees to provide service in Brazilian territory. These landing rights are granted for a fixed term of no longer than 15 years, after which time the landing rights must be reacquired in order to continue providing services. Unlike a Brazilian-owned auction winner that acquires the

exclusive right to operate a satellite and its associated frequencies from the selected Brazilian orbital location, the operator of a foreign-licensed satellite does not acquire the same exclusive right when seeking an authorization to provide services in Brazil. Instead, the foreign satellite operator obtains a non-exclusive right (a landing right) to provide service in Brazilian territory. The foreign satellite operator obtains its authorization to operate a satellite from its own domestic authority. Landing rights in a given jurisdiction simply allow the satellite operator to provide a satellite-based service legally in that jurisdiction, in competition with all other terrestrial and satellite operators that are licensed in that jurisdiction. The landing rights fees for foreign satellite operators 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

Telecommunications regulator 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 utilizing 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.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

The National Land Reform and Settlement Institute (INCRA) 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 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 in the Brazilian Congress since 2016.

BARRIERS TO DIGITAL TRADE

Data Localization

Data localization was not included in the original text of Brazil's 2014 Civil Rights Framework for the Internet, or *Marco Civil*, legislation. However, Brazil is considering draft legislation that could regulate cross-border data flows and storage requirements.

As Brazil looks to complement *Marco Civil* with comprehensive data protection and privacy legislation, it is considering several proposals that could be modeled after the European Union's approach. The United States and the technology industry intend to work with Brazil during the legislative process on an approach that would spur innovation, economic growth, and societal well-being through flexible regulatory regimes, robust cross-border data flows, and a free and open Internet.

Technology

Source Code

Presidential Decree 8135/2013 requires that government agencies procure email, file sharing, teleconferencing and Voice over Internet Protocol (VoIP) services from a federal Brazilian public entity such as the SERPRO, Brazil's Federal Data Processing Agency. Subsequent implementing regulations (Portarias 141 and 54) impose additional requirements including auditing of government contractors' systems and access to their source code. 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 it has not yet issued an alternative measure.

Internet Services

Liability/Safe Harbor

Although there are proposed laws that would modify *Marco Civil*, including one with a provision that would force online companies to assume liability for all user communications, publications, and legislation that would implement the "right to be forgotten," these proposals have not advanced substantially in Brazil's Congress. In October 2017, President Temer vetoed a provision of a political reform package that would have required Internet content providers to suspend and potentially remove online content that was "hateful, offensive, or false" toward a political candidate or party. Industry submissions cite eight proposals of concern originating in the Brazilian Parliamentary Commission of Inquiry Cybercrimes Commission. Of these, the most advanced proposal is PL 5204/2016.

Sharing Economy

Brazil has enacted regulations that limit drivers from providing transportation services via smartphone applications. Municipalities and states have passed legislation that add per mile road use fees (which do not apply to taxis), licensing and car ownership requirements, dress codes, and passenger data sharing (including geographical data about rides). These requirements, which exceed the regulations for traditional taxis, are seen as measures to protect the taxi industry. In October 2017, Brazil's Senate approved legislation that would remove the most onerous ride share restrictions on licensing, vehicle plates, car ownership, and trips crossing municipal lines. On February 22, 2018, the Chamber of Deputies passed the Senate's version of the bill, but allowed for municipalities to continue to regulate mobile applications for transportation. The bill became law on March 27, 2018.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was \$98 million in 2017, a 83.6 percent decrease (\$503 million) over 2016. U.S. goods exports to Brunei were \$121 million, down 80.3 percent (\$494 million) from the previous year. Corresponding U.S. imports from Brunei were \$23 million, up 65.6 percent. Brunei was the United States' 138th largest goods export market in 2017.

U.S. exports of services to Brunei were an estimated \$69 million in 2016 (latest data available) and U.S. imports were \$9 million. Sales of services in Brunei by majority U.S.-owned affiliates were \$100 million in 2015 (latest data available).

U.S. foreign direct investment (FDI) in Brunei (stock) was \$30 million in 2016 (latest data available), a 36.4 percent increase from 2015.

TRADE AGREEMENTS

Brunei has a network of bilateral and regional trade agreements with countries in the Indo-Pacific region as well as countries from other regions. Current trade agreement partners include Australia, China, India, Japan, Korea, and New Zealand. Additionally, Brunei is a party to the region-wide Association of Southeast Asian Nations (ASEAN) trade agreement. In November 2017, the ASEAN countries – including Brunei – signed a free trade agreement with Hong Kong. Brunei is participating in the 16-member Regional Comprehensive Economic Partnership negotiations as well as in the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

TECHNICAL BARRIERS TO TRADE

Meat and Poultry Products – 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.

While 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, Brunei's halal regime is one of the most restrictive in the world. Under the 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. 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.

IMPORT POLICIES

Tariffs

Brunei has bound 95.5 percent of its tariff lines, according to the WTO, with an average bound MFN tariff rate of 25.6 percent. Its average applied MFN tariff rate is 1.2 percent.

Brunei introduced new tariff and trade classifications in 2017. These new classifications 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. Excise duties on restricted goods such as tobacco and e-cigarettes were increased.

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. Tender awards above BND \$500,000 (approximately \$380,000) must be approved by the Sultan in his capacity as Minister of Finance, 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 of nor an observer to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In February 2017, Brunei acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, which came into force for Brunei in May 2017. 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.

Foreign Business Registration

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.

Land

In June 2016, the Brunei Government announced land code amendments that have created uncertainty over land rights. The amendments would prohibit non-citizens, including Brunei ethnic minorities, from buying, selling, or holding land by means of powers of attorney or trust deeds. The amendments were published in the official government gazette, but have not been implemented. An additional concern is that the prohibition applies retroactively to existing contracts.

BURMA

TRADE SUMMARY

The U.S. goods trade deficit with Burma was \$155 million in 2017, a 198.9 percent increase (\$103 million) over 2016. U.S. goods exports to Burma were \$211 million, up 9.4 percent (\$18 million) from the previous year. Corresponding U.S. imports from Burma were \$366 million, up 49.6 percent. Burma was the United States' 123rd largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Burma (stock) was \$1 million in 2016 (latest data available), unchanged from 2015.

SANITARY AND PHYTOSANITARY BARRIERS

The United States is increasingly concerned about non-science based sanitary and phytosanitary (SPS) measures in Burma. The United States has expressed concern about new pest risk assessment requirements, burdensome meat inspection procedures, and a lack of avian influenza (AI) regionalization protocols. The United States is also monitoring the development of a new Food Law in Burma.

Burma announced Pest Risk Assessment regulations in 2016, requiring additional information regarding plant products before they are approved to enter the country. The new rules entered into force on January 1, 2017. To avoid any disruption to ongoing trade, in September 2017, the Burmese Ministry of Agriculture, Livestock, and Irrigation, Plant Protection Division, reached an agreement with the U.S. Department of Agriculture on a process for achieving market access for major impacted commodities. All major impacted U.S. commodities have now been approved or expect prompt approval for entry into the country.

IMPORT POLICIES

Tariffs

Burma is a Member of the WTO. However, to date, Burma's WTO tariff schedule covers only 18 percent of the country's tariffs on goods. Burma's overall simple average bound tariff rate is 83.3 percent, while the average applied tariff rate is around 5.6 percent. Agricultural goods have an average bound tariff rate of 102.9 percent, while the average applied tariff rate is around 8.6 percent. Burma is a member of ASEAN.

Non-Tariff Barriers

The Directorate of Trade within the Ministry of Commerce oversees amendments to the Commerce Ministry's list of prohibited imports. 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, and items featuring images of the Buddha, Burma's pagodas, and the flag of Burma.

Import and Export Licensing

Burma applies import and export licenses to trade in a wide range of products. However, a Ministry of Commerce process to reduce redundant documentary requirements also involves reducing the number of products subject to licensing.

Burma manages imports of meat products through an import licensing scheme. 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 meat have been granted with relative reliability since 2015, they are few in number and cover small volumes. In addition, despite laboratory testing of meat samples during the license approval process, additional testing is required for each shipment of imported meat products upon arrival in Burma. These testing and inspection procedures do not appear to align with international standards for risk-based inspection of imports.

Customs Procedures

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.

Burma ratified the WTO Trade Facilitation Agreement on December 16, 2015. The Ministry of Commerce launched a Myanmar Trade Portal: www.myanmartradeportal.gov.mm in 2016.

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 \$7,400 dollars).

SUBSIDIES

The Burmese government provided 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 Investment Law provides tax and tariff exemptions for many types of activities by domestic and foreign firms investing within specific zones.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The government submitted four draft intellectual property laws regarding trademarks, patents, industrial designs, and copyright to Parliament in January 2018. The draft laws are aimed at meeting Burma's international obligations.

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. The Ministry of Planning and Finance has announced plans to liberalize the insurance sector, but has not released additional details. While foreign banks are allowed to operate in Burma, they cannot do business in local currency and are subject to other restrictions and requirements. Foreign banks can only offer their services—including deposit accounts, working capital financing, trade financing and foreign exchange transactions—to foreign companies. Foreign banks are not allowed to offer loans in Kyats (local currency).

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 resolving insolvency.

In 2016 Burma adopted the Myanmar Investment Law, which consolidated the domestic investment law and foreign investment law into a single instrument. In April 2017, implementing rules for the law went into effect. The law and implementing rules 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 addition, Burma adopted a new Companies Law, which will go into effect in August 2018 and replace 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 is also one of the largest source countries of methamphetamines. The underdeveloped banking system, the low risk of enforcement and prosecution, and the large illicit economy breed criminal activity, though the value is difficult to estimate.

Corruption

The government has prioritized fighting corruption, and has succeeded in countering high-level corruption to some extent. However, underdeveloped justice and investigative institutions pose significant challenges to making the fight against corruption both systematic and effective. Low-level corruption is still common in some areas but business representatives report a sharp decrease in required payments. In its 2016 Corruption Perceptions Index, Transparency International rated Burma 136 out of 176 countries, an improvement from the 2015 ranking of 147 out of 168 countries. Situations where corruption could be a problem 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 \$2.7 billion in 2017, a 8.6 percent increase (\$211 million) over 2016. U.S. goods exports to Cambodia were \$400 million, up 10.9 percent (\$39 million) from the previous year. Corresponding U.S. imports from Cambodia were \$3.1 billion, up 8.9 percent. Cambodia was the United States' 101st largest goods export market in 2017.

IMPORT POLICIES

Tariffs

Cambodia is one of the few least-developed WTO Members that made binding commitments on all products in its tariff schedule when it joined the WTO in 2004. Cambodia's overall simple average bound tariff rate is 19.5 percent, while the average applied tariff rate is around 11.2 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.

Customs

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, may vary for reasons that can be unclear.

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

Taxation

Cambodia levies trade-related taxes in the form of customs duties, additional taxes on gasoline (\$0.02 per liter) and diesel oil (\$0.04 per liter), two indirect taxes (a value-added tax (VAT) and an excise tax), and taxes on exports. The VAT is applied at a uniform rate of 10 percent. To date, the VAT has been imposed only on large companies, but the Cambodian government is working to expand the VAT tax base. The VAT is not collected on exports and services consumed outside of Cambodia (technically, a zero percent VAT applies). Subject to certain criteria, the zero percent rate also applies to businesses that support exporters and subcontractors that supply goods and services to exporters, including education services, electricity and clean water, unprocessed agricultural products and waste removal.

On October 10, 2017, Cambodia implemented a new regulation on transfer pricing immediately after the initiative was announced with no phase-in period. It was the first revision to transfer pricing in over 20 years. According to the new regulation, Cambodian-based enterprises that have transactions with related foreign entities must submit:

1. An annual transfer pricing declaration, to be submitted together with the annual declaration on tax on income.

2. Annual transfer pricing documentation, to be submitted upon request by Cambodia's General Department of Taxation (GDT).

Over the last several years, GDT has increased tax revenues significantly. After years of somewhat loose enforcement of the tax code, GDT has hit some companies with exorbitant tax bills and have had assets frozen for failure to pay purported back taxes.

GOVERNMENT PROCUREMENT

By law, public 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. In addition, 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 (www.mef.gov.kh). 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 public procurement process are common despite a strict legal requirement for audits and inspections. Despite accusations of malfeasance at a number of ministries, the Cambodian government has taken little action to investigate irregularities.

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, are reportedly 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. 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 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 2014, a new committee was created under the Ministry of Interior called the Cambodia Counter Counterfeit Committee (CCCC) to act as an umbrella agency consisting of over fourteen organizations. In 2016, the CCCC launched its five-year

strategic plan for 2016-2020 with a focus on targeting products that cause a high risk to health and social safety. The CCCC has not yet focused on other counterfeit products.

Cambodia is a member of the Patent Cooperation Treaty and became bound to the treaty on December 8, 2016. In November 2016, Cambodia acceded to the Hague Agreement Concerning the International Registration of Industrial Designs, which took effect on February 25, 2017. 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. As of February 2016, the Cambodian government reported that a countrywide review of ELCs resulted in the re-appropriation of over one million hectares of land, but land rights activists dispute the accuracy of these reports.

While Cambodia has made significant progress in formalizing its tax regime and increasing tax revenues, reports suggest that the GDT's methods can be very burdensome on tax-compliant companies. 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. The government has indicated it hopes to expand the CSS to include

credit transactions in the future. Industry contacts note that as more transactions are required to be routed through the CSS, this will hinder the competitiveness of foreign payment suppliers and could have several other negative impacts on consumers, including a decrease in security, speed, and reliability of transactions.

OTHER BARRIERS

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 to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. The Anti-Corruption Unit's (ACU) participation in investigations of political opponents of the ruling party has tarnished its reputation as an unbiased enforcer of rules.

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 MOU with the ACU has helped them avoid paying "facilitation payments." Cambodia ranks 113 out of 137 in the World Economic Forum's Global Competitiveness Index (2017-2018) on Irregular Payments and Bribes.

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 smuggling (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 products rights holders to file complaints regarding smuggled and parallel goods. Since the process is fairly new, it is too early to assess its effects.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was \$17.5 billion in 2017, a 59.7 percent increase (\$6.5 billion) over 2016. U.S. goods exports to Canada were \$282.5 billion, up 5.9 percent (\$15.7 billion) from the previous year. Corresponding U.S. imports from Canada were \$300.0 billion, up 8.0 percent. Canada was the United States' largest goods export market in 2017.¹

U.S. exports of services to Canada were an estimated \$58.7 billion in 2017 and U.S. imports were \$32.8 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$121.3 billion in 2015 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$100.0 billion.

U.S. foreign direct investment (FDI) in Canada (stock) was \$363.9 billion in 2016 (latest data available), a 5.0 percent increase from 2015. 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 agreements on labor and the environment. The United States entered into negotiations with the Parties seeking to update and rebalance the NAFTA by addressing many of these barriers, among other issues, in August 2017.

¹ The international shipment of non-U.S. goods through the United States can make standard measures of bilateral trade balances potentially misleading. For example, it is common for goods to be shipped through regional trade hubs without further processing before final shipment to their ultimate destination. This can be seen in data reported by the United States' largest trading partner, Canada. The U.S. data report a \$17.5 billion goods deficit with Canada in 2017. Canada reports a substantially larger U.S. goods surplus -- \$97.7 billion -- in the same relationship. This reflects the large role of re-exported goods originating in other countries (or originating in one NAFTA partner, arriving in the United States, and then returned or re-exported to the other partner without substantial transformation).

U.S. statistics count goods coming into the U.S. customs territory from third countries and being exported to our trading partners, without substantial transformation, as exports from the United States. Canada, however, counts these re-exported goods as imports from the actual country of origin. In the same way, Canadian export data may include re-exported products originating in other countries as part of their exports to the United States, whereas U.S. data count these products as imports from the country of origin. These counting methods make each country's bilateral balance data consistent with its overall balance, but yield large discrepancies in national measures of bilateral balance. It is likely that a measure of the U.S. trade deficit with Canada excluding re-exports in all accounts would be somewhere in between the values calculated by the United States and by our country trading partner.

TECHNICAL BARRIERS TO TRADE

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 new 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 will submit comments on the proposed regulations.

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 is designed to give CFIA an oversight role for maintaining and improving quality standards for grains in Canada; 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 and to support trade. 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.

IMPORT POLICIES

Agricultural Supply Management

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 provides milk components at discounted prices to domestic processors under the Special Milk Class Permit Program (SMCPP). These prices are "discounted" and are lower than Canadian support prices and

reflect U.S. or world prices. The SMCPP is designed to help Canadian processed products compete against imports in 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 extends discount pricing to an even wider range of Canadian dairy ingredients. 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.

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.

Customs Procedures

Personal Duty Exemption

Canada's personal duty exemption for residents who bring back goods from short trips outside of its borders is considerably less generous than the U.S. personal duty exemption. Canada provides no duty exemption for returning residents who have been out of Canada for fewer than 24 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 maximum threshold below which no duty or tax is charged on imported items. 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.

Wine, Beer, and Spirits

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 January 2017, the United States requested WTO dispute settlement consultations with Canada regarding measures maintained by British Columbia (BC) governing the sale of wine in grocery stores. The WTO Secretariat entitled that dispute *Canada — Measures Governing the Sale of Wine in Grocery Stores* and assigned it the dispute number DS520. The United States and Canada held consultations in Ottawa in April 2017. In October 2017, the United States filed a second request for consultations with Canada regarding the same matter and identified successor laws and regulations that entered into force subsequent to the original request for consultations. The United States and Canada held consultations by video conference in October 2017.

The BC wine measures that the United States has challenged provide advantages to BC wine through the granting of exclusive access to a retail channel of selling wine on grocery store shelves. The BC measures discriminate on their face against imported wine by allowing 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." 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.

Ontario

Previously, grocery stores in Ontario were not permitted to sell wine. 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.

DOMESTIC SUPPORT MEASURES

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 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 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, 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 to investigate Brazil's claims on September 29, 2017.

On October 16, 2017, Bombardier and a European-based multinational aerospace corporation announced a partnership on the CSeries aircraft program. Under the agreement, the European aerospace company 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. The European aerospace company will provide procurement, sales and marketing, and customer support expertise as part of the agreement.

While Parties to the February 2011 OECD Sector Understanding on Export Credits for Civil Aircraft implement that agreement, the United States also has expressed concern over the possible use of export credit financing from Export Development Canada to support commercial sales of Bombardier CSeries aircraft in the U.S. market. The United States will continue to monitor carefully any government financing and support of the CSeries aircraft.

Canada has committed to spend approximately C\$25 million (approximately \$19.2 million) from 2009 to 2018 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

Canada has made commitments to open its government procurement to U.S. suppliers under the WTO Agreement on Government Procurement (GPA) and NAFTA. The current agreements provide U.S. businesses with access to procurement conducted by most Canadian federal departments and a large number of provincial entities, and to procurement by some but not all of Canada’s Crown Corporations.

Hydro-Québec, a provincial-level Crown Corporation in Quebec, has a provincial mandate to require 60 percent Québec content for its procurements for wind energy projects, and these local content requirements could pose hurdles for U.S. companies in the renewable energy sector in Canada.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Canada remains listed on the Watch List in the Special 301 Report. 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 remains deeply concerned 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 2017 out-of-cycle review of Notorious Markets listed the Pacific Mall in Markham, Ontario due to the large-scale availability of counterfeit and pirated goods. With respect to pharmaceuticals, the United States welcomed the Supreme Court of Canada’s June 2017 ruling that rejected the application of patent utility standards that lower Canadian courts had adopted resulting in the invalidation of patents held by U.S. pharmaceutical companies. The United States has concerns about due process and transparency relating to the geographical indications system in Canada, including commitments Canada took under the Canada-EU Comprehensive Economic and Trade Agreement (CETA), which came into force provisionally on September 21, 2017.

SERVICES BARRIERS

Telecommunications

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 TV 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.

U.S. suppliers of programming also have raised concerns about a CRTC policy not to permit simultaneous substitution of advertising for the Super Bowl, beginning in the 2016-2017 season. 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 believe that the price Canadian networks pay for Super Bowl rights is determined by the value of advertising they can sell in Canada, and that the CRTC’s decision reduces the value of their programming. On August 19, 2016, the CRTC issued a formal rule preventing simultaneous substitution during the Super Bowl by a major Canadian telecommunication company, which has exclusive rights to air the Super Bowl in Canada. The rule came into force January 1, 2017. The United States is very concerned about this policy. On August 1, 2017, the Canadian telecommunication company with rights to air the Super Bowl (Bell Canada) submitted a formal request to the CRTC to rescind its simultaneous substitution ruling, noting it has had a negative effect on broadcasters, creators, and the Canadian economy. Bell Canada also separately challenged the CRTC rule in the Canadian Federal Court of Appeals, but its claim was dismissed in December 2017.

Certain U.S. broadcasters operating in border states have also complained about Canadian cable and satellite suppliers picking up their signals and redistributing them throughout Canada without the U.S. broadcasters’ consent. The United States is exploring avenues to address these concerns.

Financial Services

By law, Canada requires financial institutions in Canada to mirror any data that relates 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.

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 above a threshold value. On June 22, 2017, a provision to increase the threshold for review to C\$1 billion (approximately \$766.5 million) from C\$600 million (approximately \$459.9 million) for WTO investors that are not state-owned enterprises (SOEs) came into force. 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.

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. Foreign acquisition proposals under government review must demonstrate a "net benefit" to Canada to be approved. The ISED Minister may disclose publicly that an investment proposal does not satisfy the net benefit test and publicly explain the reasons for denying the investment, so long as the explanation will not do harm to the Canadian business or the foreign investor. The ISED Minister also can make investment approval contingent upon meeting certain conditions such as minimum levels of employment and research and development.

Canada administers supplemental guidelines for investment by foreign SOEs. Those guidelines include a stipulation that future bids by SOEs to acquire control of a Canadian oil-sands business will be approved on an "exceptional basis only."

On December 19, 2016, the Canadian government published guidelines on the national security review of investments under the ICA. The guidelines provide a list of criteria the ISED Minister may consider when making a national security determination on an investment, and provide information to investors on how and when to file a notification under the ICA.

BARRIERS TO DIGITAL TRADE

Digital Media

On September 28, 2017, the government launched its Creative Canada initiative that provides a policy framework to grow 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. The United States will closely monitor this policy to ensure it is implemented in a manner that does not constitute a barrier to digital trade.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was \$3.1 billion in 2017, a 25.9 percent decrease (\$1.1 billion) over 2016. U.S. goods exports to Chile were \$13.6 billion, up 5.3 percent (\$687 million) from the previous year. Corresponding U.S. imports from Chile were \$10.6 billion, up 19.9 percent. Chile was the United States' 21st largest goods export market in 2017.

U.S. exports of services to Chile were an estimated \$4.3 billion in 2016 (latest data available) and U.S. imports were \$1.7 billion. Sales of services in Chile by majority U.S.-owned affiliates were \$10.4 billion in 2015 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$203 million.

U.S. foreign direct investment (FDI) in Chile (stock) was \$29.4 billion in 2016 (latest data available), a 3.1 percent increase from 2015. U.S. direct investment in Chile is led by mining, finance/insurance, and manufacturing.

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 have supported increased U.S. exports to Chile. However, the United States continues to have significant concerns with Chile's failure to implement fully some intellectual property rights protections and enforcement commitments made under the FTA.

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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Nutritional Labeling

In June 2016, Chile implemented the "Law on Food Nutritional Composition and its Advertising" (known as Decree 13). The law, and its subsequent implementing regulations, establish a front-of-package warning label system for certain prepackaged food and beverage products that exceed specified thresholds for sodium, sugar, energy (calories), and saturated fats. Food and beverage products that exceed the thresholds 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 food and beverage products are not covered

by these same measures. Because food and beverage products must bear a warning label for each threshold surpassed, products can be required to bear up to four warning labels on the front of the pack. Thresholds are established based on 100 gram or 100 milliliter quantities, rather than portion sizes consumed in single servings. In accordance with the timeline established in Decree 13, Chile has indicated that it will lower these threshold limits in June 2018, thereby expanding the number and scope of products affected.

Additionally, the law restricts the advertising of products that exceed nutritional thresholds, including by prohibiting the use of images deemed appealing to children 14 years of age or younger. Implementation of Decree 13, particularly with regard to the interpretation of registered trademarks as constituting advertising on product packaging, has been inconsistent. Despite initial assurances that registered trademarks would not be affected, in the months after implementation of the Decree, the Chilean Ministry of Health (MINSAL) barred foreign products from entering the Chilean market on the basis that images on product packaging, including registered trademarks, constitute advertising to children and therefore violate provisions of Decree 13. These actions resulted in delays, shortages, and repackaging that cost U.S. firms millions of dollars in lost sales and other expenses.

In December 2017, the Chilean Ministry of Health (MINSAL) published additional requirements and specifications related to the advertising of food and beverage products that carry the warning labels. Beginning on June 11, 2018, advertisements on all media (including television, radio, print, Internet, and public advertisements) of such products must also include the phrase “Choose foods with fewer stop signs,” followed by “Ministry of Health, Government of Chile” below the MINSAL logo.

The United States has raised concerns with the law and its associated implementing measures at the WTO Committee on Technical Barriers to Trade (WTO TBT Committee), through the FTA in the FTC and the FTA TBT Committee, and on other occasions. The United States will continue to discuss these issues, and request explanation of the underlying scientific justification for the measures, with Chile.

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 a 4G phone certification, 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 cost to unlock the AWS band. Thus, if a device has 4G capability, but the AWS band is not accessible it 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 published 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. As a result of U.S. engagement through the WTO TBT Committee and FTA mechanisms, Chile also provided additional time for stakeholder comment and has addressed issues with the use of a common international standard.

However, concerns continue to 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.

Sanitary and Phytosanitary Barriers

Salmonid Products Ban

In July 2010, Chile's Ministry of Fisheries (SERNAPESCA) 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 2017 Special 301 Report. The adequacy and effectiveness of Chile's framework for the protection and enforcement of intellectual property (IP) rights remains a serious concern. Specifically, this concern relates to, among other things, a lack of protection against the unlawful circumvention of technological protection measures, a lack of effective remedies to address satellite television piracy, 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 patent issues in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products.

The United States will continue to work bilaterally with Chile to address these and other IP issues, including those related to overdue FTA implementation tasks.

IMPORT POLICIES

Tariffs

According to the WTO, Chile's average bound WTO tariff rate was 25.1 percent in 2016 (latest data available), and its average MFN applied tariff rate was 6 percent. Apart from a price-band system for some agricultural products, 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, electric and high-value vehicles, caviar conserves and their derivatives, and air or gas arms and their

accessories (except for underwater hunting), are subject to a 15 percent tax. The luxury tax is not assessed on U.S.-made vehicles as a result of the FTA. Pyrotechnic articles, such as fireworks, petards, and similar items (except for industrial, mining or agricultural use), are subject to a 50 percent tax.

Pursuant to changes in Chile's tax law, foreign shareholders must pay a 35 percent tax on capital gains that are recognized in connection with the sale or other transfer of Chilean shares on or after January 1, 2017. This tax change 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 new rules, the rate is 35 percent on net gain in all cases.

Under the United States - Chile Treaty for the Avoidance of Double Taxation, which was signed in 2010 but which has not yet come into force, 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 Measures

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.

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 distinct 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 when 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 \$375.2 billion in 2017, a 8.1 percent increase (\$28.2 billion) over 2016. U.S. goods exports to China were \$130.4 billion, up 12.8 percent (\$14.8 billion) from the previous year. Corresponding U.S. imports from China were \$505.6 billion, up 9.3 percent. China was the United States' 3rd largest goods export market in 2017.

U.S. exports of services to China were an estimated \$56.0 billion in 2017 and U.S. imports were \$17.6 billion. Sales of services in China by majority U.S.-owned affiliates were \$55.2 billion in 2015 (latest data available), while sales of services in the United States by majority China-owned firms were \$5.7 billion.

U.S. foreign direct investment (FDI) in China (stock) was \$92.5 billion in 2016 (latest data available), a 9.4 percent increase from 2015. U.S. direct investment in China is led by manufacturing, wholesale trade, and nonbank holding companies.

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 U.S. Government and U.S. stakeholders. The key concerns in each of these areas are summarized below. For more detailed information on these concerns, see the 2017 USTR Report to Congress on China's WTO Compliance, issued on January 19, 2018, at:

https://ustr.gov/sites/default/files/files/Press/Reports/China_percent202017_percent20WTO_percent20Report.pdf.

INDUSTRIAL POLICIES

Overview

China continued to pursue a wide array of industrial policies in 2017 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 domestic companies attempting to move up the economic value chain.

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 have 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 the transfer of technologies and intellectual property to Chinese

companies, (2) depriving U.S. companies of the ability to set market-based terms in licensing negotiations with 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 unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft for commercial gains. On March 22, 2018, USTR issued a report supporting findings 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.

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 industries, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, new energy vehicles (NEVs), power equipment, farm machinery, new materials, 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 technology, products and services with Chinese technology, products and services in the China market through any means possible so as to ready Chinese companies for dominating international markets.

Made in China 2025 seeks to build up Chinese companies in the 10 targeted, strategic industries 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 (IP) 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 industries.

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, as other WTO Members do not use them, 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. In this regard, even if the Chinese government fails to achieve 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 industries. The United States continues to monitor and analyze Chinese policies and practices in key industrial sectors, specifically those outlined in *Made in China 2025*, which are important pillars of the U.S. and global economies, to ensure a level playing field.

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 IP

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 IP owned or developed in other countries the same as IP 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 IP owned or developed in other countries the same as domestically owned or developed IP. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of IP 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." Again, the United States should not have to seek the same promises over and over through multiple negotiations.

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.

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 performance requirements relating to exportation or the use of local content, 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. It remains to be seen if these promises will be fulfilled.

Secure and Controllable Information and Communications Technology Policies

In 2017, as China issued a series of draft and final measures to implement the *Cybersecurity Law* adopted in November 2016, global concerns regarding China's approach to cybersecurity policy increased. 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 its 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 (IT) users purchase Chinese products and favor Chinese service suppliers, imposed local content requirements, imposed domestic research and development (R&D) requirements, considered the location of R&D as a cybersecurity risk factor and required the transfer or disclosure of source code or other IP. 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 does not intend to honor its promises. The numerous draft and final cybersecurity implementation measures issued by China in 2017 raise serious questions about China’s approach to cybersecurity regulation. China’s measures do not appear to be consistent with the non-discriminatory, non-trade restrictive approach to which China has committed. Accordingly, throughout the past year, the United States conveyed its serious concerns about China’s approach to cybersecurity regulation through written comments on draft measures, bilateral engagement under the auspices of the United States-China Comprehensive Economic Dialogue (CED) and multilateral engagement at WTO committee 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.

Subsidies

China continues to provide substantial subsidies to its domestic industries, which have 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 U.S. 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 16 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.

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 unprecedentedly severe 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 producers and workers in both the United States and third country markets such as Canada and Mexico, where U.S. exports compete with Chinese exports. While China recognizes the severe excess capacity problem in these industries, among others, and has taken some steps to try to address this problem, there have been mixed results.

From 2000 to 2014, China accounted for more than 75 percent of global steelmaking capacity growth, even though China has no comparative advantage with regard to the energy and raw material inputs that make up the majority of costs for steelmaking. Currently, China's capacity represents about one-half of global capacity and twice the combined steelmaking capacity of the European Union (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.

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

Not unlike the situations in the steel and aluminum industries, China's production of soda ash has increased as domestic demand has stagnated. As a result, China's soda ash exports increased 23 percent in 2015 as compared to the previous year, and this trend continued in 2016. Further, China's soda ash production, which totaled 26 million MT in 2016, is projected to grow at nearly three percent annually through 2020, which is more than double China's projected 1.2 percent annual increase in domestic demand over that same time period. It also is estimated that China's excess soda ash capacity will continue to grow in the coming years, reaching over 10.5 million MT by 2019.

Excess capacity in China – whether in the steel industry or other industries like aluminum or soda ash – hurts U.S. industries and workers not only because of direct exports from China to the United States, but because lower global prices and a glut of supply make it difficult for even the most competitive producers to remain viable. Domestic industries in many of China’s trading partners have continued to respond to the effects of the trade-distortive effects of China’s excess capacity by petitioning their governments to impose trade remedies such as antidumping and countervailing duties.

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 aerospace, automotive, construction and electronics. It is deeply concerning that the United States has been forced to bring multiple cases to address the same obvious WTO compliance issues.

Value-added Tax Rebates and Related Policies

As in prior years, in 2017, 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 to deepen 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 Recoverable Materials

In 2017, China issued two 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 or recovered materials.

Standards

In the standards area, two principal types of Chinese policies harm U.S. companies. First, 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. Second, China 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.

Currently, China is undergoing 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 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 standards development and setting, with several U.S. and other foreign companies being allowed to vote and to participate at the working group level in standards development. Nevertheless, 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*.

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 eventually 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 China market to promote or compel the adoption of Chinese standards in global markets.

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 (IPR) 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 by the State Council in 2017, inadequacies in China's 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 2017 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 government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' intellectual property (IP), 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 has secured commitments from China not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States has 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 has 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 is strengthening 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 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, as discussed above, the United States continues to have significant concerns about IP protection in China, including with regard to trade secrets. Thus, the protection of trade secrets and IP 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 sponsors the theft of trade secrets or actively frustrates the effective protection of trade secrets.

Bad Faith Trademark Registration

Of particular concern is the continuing registration of trademarks in bad faith. 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 of U.S. companies’ global reputations.

Pharmaceuticals

The United States has engaged China on a range of patent and technology transfer concerns relating to pharmaceuticals. At the December 2013 JCCT meeting, China committed to permit supplemental data supporting pharmaceutical patent applications. In April 2017, China issued amended patent examination guidelines, which require patent examiners to take into account supplemental test data submitted during the patent examination process. However, there are reports that China’s patent examiners apply these guidelines inconsistently and sometimes too narrowly, and as a result some patent applicants have found that submitting supplemental data becomes practically impossible.

Meanwhile, many other concerns remain, including the need to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide effective enforcement against infringement of pharmaceutical patents. In 2017, China issued draft measures in this area, but they have not yet been finalized. Additionally, a backlogged drug regulatory approval system presents market access and patient access concerns.

At the December 2014 JCCT meeting, China committed to significantly reduce time-to-market for innovative pharmaceutical products through streamlined processes and additional funding and personnel. In addition, in 2017, the State Council and China’s Food and Drug Administration (CFDA) issued several draft measures evidencing a positive trajectory for the protection of pharmaceutical patents and regulatory data in China and for a more streamlined drug approval process. However, these draft measures lack full details about implementation, and it is not yet clear whether China finally intends to comply with its commitments in this area. Accordingly, the United States will remain in close contact with U.S. industry and will actively examine developments 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.

Another serious concern stems from China’s proposals in the pharmaceuticals sector that seek to promote government-directed indigenous innovation and technology transfer through the provision of regulatory

preferences. For example, in 2016, a State Council measure issued in final form without having been made available for public comment creates an expedited regulatory approval process for innovative new drugs where the applicant's manufacturing capacity has been shifted to China. The United States is pressing China to reconsider this approach.

In April 2016, CFDA issued a draft measure that effectively would require drug manufacturers to commit to price concessions as a pre-condition for marketing approval of new drugs. Given its inconsistency with internationally accepted science-based regulatory practices for drug approval focusing on ensuring drug safety, effectiveness, and manufacturing consistency and quality, the draft measure elicited serious concerns from the United States and U.S. industry. Subsequently, at the November 2016 JCCT meeting, China promised not to link a pricing commitment to drug registration evaluation and approval. In addition, China promised not to require any specific pricing information when implementing the final measure. Given China's lack of follow through in other areas, as discussed in this report, the United States remains concerned about whether these promises will be fulfilled. Accordingly, the United States has remained in close contact with U.S. industry and has been examining developments carefully in this area.

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 more 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 agreed to actively promote e-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 addition, in December 2016 and November 2017, China published drafts of a new *E-Commerce Law* for public comment. In written comments, the United States has stressed that the final version of this law should promote an effective notice-and-takedown regime that addresses online infringement while providing appropriate safeguards to Internet service providers.

Counterfeit Goods

Although rights holders report increased enforcement efforts by Chinese government authorities, counterfeiting in China, affecting a wide range of goods, remains widespread. 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. At the July 2014 S&ED meeting, China committed to develop and seriously consider amendments to the *Drug Administration Law* that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the *Drug Administration Law* in draft form for public comment and to take into account the opinions of the United States and other relevant stakeholders. 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 U.S. industry and will continue to examine developments vigilantly in this area.

SERVICES

Overview

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. While the United States maintained a \$38.5 billion surplus in trade in services with China in 2017, the U.S. share of China's services market remained well below the U.S. share of the global services market.

In 2017, 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 payment, cloud computing, telecommunications, video and entertainment software, film production and distribution, express delivery and legal services, among others. In addition, China's *Cybersecurity Law* and related draft and final implementing measures include mandates to purchase domestic ICT products and services, restrictions on cross-border data flows and requirements to store and process data locally, which make it even more difficult for U.S. services suppliers 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.

Electronic Payment Services

In 2017, 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. Reportedly, several U.S. suppliers have sought to submit their applications for licenses, but no action has been taken on them yet. 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 the China market to support its efforts to build out its electronic payment services network abroad, including in the United States. In one telling example, China Union Pay recently announced that it had reached 100 percent penetration at U.S. automated teller machines and between 80 and 90 percent penetration 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.

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. Significantly more U.S. films have been imported and distributed in China since the signing of the MOU, and the revenue received by U.S. film producers has increased significantly. 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.

Banking Services

China has largely refused to open its banking sector to significant non-Chinese competition. Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restricted access in other ways that have kept foreign banks from obtaining significant market share in China. The most recently available data shows that the foreign share of banking assets in China actually has declined since China joined the WTO. China has imposed various discriminatory and non-transparent regulatory requirements that have made it more difficult for foreign banks to establish and expand their market presence in China.

One problematic area involves the ability of U.S. and other foreign banks to participate in the domestic currency business in China. This is a market segment that foreign banks are most eager to pursue in China, particularly with regard to Chinese individuals. Under existing governing regulations, only foreign-funded banks that have had a representative office in China for one year and that have total assets exceeding \$10 billion can apply to incorporate in China. In addition, China imposes some asset and capital requirements on foreign banks that it does not apply to domestic banks, and it is slow to act upon the applications of foreign banks to set up new internal branches. Furthermore, China restricts the scope of activities that can be conducted by foreign banks seeking to operate in China through branches instead of through subsidiaries. Discriminatory and non-transparent regulations also have limited foreign banks' ability to participate in China's capital markets.

For years, China has limited the sale of equity stakes in existing Chinese-owned banks for a single foreign investor to 20 percent, while the total equity share of all foreign investors is limited to 25 percent. In November 2017, China announced that it would be removing these foreign equity restrictions and that the same set of rules would apply to domestic and foreign companies. In February 2018, China issued a measure suggesting that it intends to remove the foreign equity restrictions, but the measure is vague in important respects and it is not yet clear whether, in practice, China will be providing meaningful, non-discriminatory market access.

Insurance Services

China's regulation of the insurance sector has resulted in market access barriers for foreign insurers, whose share of China's market remains very low. In the life insurance sector, China only permits foreign companies to establish as Chinese-foreign joint ventures, with foreign equity capped at 50 percent. The market share of these joint ventures is about five percent. For the health and pension insurance sectors, China also caps foreign equity at 50 percent. While China allows wholly foreign-owned subsidiaries in the non-life (i.e., 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 *Foreign Investment Catalogue* 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 sometimes encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations. In November

2017, China announced that it would be easing certain of its foreign equity restrictions in the insurance services sector, but to date it has not done so.

Securities and Asset Management Services

In the securities and asset management services sectors, China only permits foreign companies to establish as Chinese-foreign joint ventures, with foreign equity capped at 49 percent. Recently, however, China reportedly licensed one foreign company to establish a majority foreign-owned joint venture. 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 November 2017, China announced that it would be removing certain of its foreign equity restrictions in the securities and asset management services sectors over time. In March 2018, China issued a draft measure for public comment that appears to relate to the November 2017 announcement regarding the securities sector. Some aspects of this draft measure raise questions about whether China intends to implement its November 2017 announcement in a full and meaningful manner. China has not yet issued a draft measure for public comment relating to the asset management sector.

Telecommunications Services

Restrictions maintained by China on value-added telecommunications services have created serious barriers to market entry for foreign suppliers seeking to provide value-added telecommunications services. 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. In addition, China's restrictions on basic telecommunications services, such as 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 exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic telecommunications services market. China recently issued draft regulations that propose to allow domestic and foreign suppliers to obtain licenses to supply mobile telecommunications resale services. However, the terms and conditions applicable to foreign suppliers remain unclear, and it is too early to tell whether any meaningful market access would be provided.

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. China also prohibits foreign companies from providing film production and distribution services in China. In addition, the United States 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 (*See discussion below in the section on Barriers to Digital Trade*).

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 has issued measures intended to implement the legal services commitments that it made upon joining the WTO. However, these measures restrict 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, and impose lengthy delays for the establishment of new offices.

BARRIERS TO DIGITAL TRADE

Overview

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, overlapping regulatory jurisdictions often result in a single service requiring separate authorizations from multiple agencies.

Cloud Computing Restrictions

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 GATS commitments allow 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," scheduled to enter into force in March 2018, which prohibits Chinese telecommunication operators from offering consumers leased lines or virtual private network (VPN) connections reaching overseas data centers – eliminating the key access mechanism companies use to connect to foreign cloud computing service providers and related resources. The United States is evaluating this restriction in the context of China's WTO GATS obligation to ensure access to and use of leased lines for cross-border data processing services. The United States will work to ensure that legitimate cross-border services can continue to be offered into China.

Web Filtering and Blocking

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 12 of the top 30 global sites, and U.S. industry research has calculated that up to 3,000 sites in total are blocked, affecting billions of dollars in business, including communications, networking, app stores, news and other sites. While becoming more sophisticated over time, the technical means of blocking, dubbed the Great Firewall, still often appears to affect sites that may not be the intended target, but that may share the same Internet Protocol address. In addition, there have been reports that simply having to pass all Internet traffic through a national firewall adds delays to transmission that can significantly degrade the quality of the service, in some cases to a commercially unacceptable level, thereby inhibiting or precluding the cross-border supply of certain services. In the past, consumers and business have been able to avoid government-run filtering through the use of VPN services, but a crackdown in 2017 has all but eliminated that option, with popular VPN applications now banned. This development has had a particularly dire

effect on foreign businesses, which routinely use VPN services to connect to locations and services outside of China, and which depend on VPN technology to ensure confidentiality of communications.

Voice-over-Internet Protocol (VOIP) Services

While computer-to-computer 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.

Domain Name Rules

U.S. and other foreign stakeholders continue to express concern over rules proposed in 2016 to regulate Internet Domain Names, a critical input into many web-based services offered in China. While China explained that initial fears that the rules sought to block access to any website not registered in China were based on a misreading of the intent of the proposed rules, concerns remain with regard to how China intends to implement requirements for registering and using domain names and other Internet resources.

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.

Restrictions on Online Video and Entertainment Software

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, SAPPRT 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, SAPPRT has instituted numerous measures, such as requirements that video platforms all be state-owned, that prevent foreign suppliers from qualifying for a license. At the same time, several Chinese companies (including Alibaba) appear exempt from these requirements. SAPPRT 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.

Encryption

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding of sensitive commercial information. Such functionality is particularly important in China, given the high incidence of cybertheft 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 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.

Restrictions on Internet-enabled Payment Services

The People's Bank of China (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 limited services. This report provides clear evidence supporting stakeholder concerns about the difficulties they have faced entering the market and the slow process foreign firms face in getting licensed. In addition, as with other ICT sectors, PBOC has required suppliers to localize data and facilities in China. The United States will continue to closely monitor developments in this area.

AGRICULTURE

Overview

China is the largest agricultural export market for the United States, with more than \$20 billion in U.S. agricultural exports in 2017, down from \$21 billion in 2016. 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.

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 SPS Committee, include exporter facility and product registration requirements for goods such as dairy, infant formula, seafood, grains 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 seemingly provide China a tool to control the volume of food trade as desired.

Beef, Poultry and Pork

In 2017, China restored partial access for U.S. beef exports. While this decision was recognized as a sign of U.S.-China cooperation, it highlights two important points that underlie the overall U.S.-China agricultural relationship. First, when China has political will, it finds a solution to maintain or restore trade. Years of technical exchanges between the U.S. industry and regulatory agencies with China were unable to resolve its unscientific ban on U.S. beef, despite the United States' negligible risk status for bovine spongiform encephalopathy (BSE). For many other commodities, there appears to be a lack of political will on the Chinese side to open its market, despite overwhelming technical and scientific evidence provided by the U.S. side. Second, although the agreement restoring beef access is broad in scope, it is not based on international standards. Instead, China continues to maintain a zero-tolerance ban on the use of beta-agonists, hormones and other synthetic and natural compounds that are widely used by the international beef industry. In 2017, China also continued to impose an unwarranted and unscientific avian influenza-related import suspension on U.S. poultry due to an outbreak of high-pathogenic avian influenza

(HPAI) in 2015, which has now been resolved in the United States. Specifically, China has been unwilling to recognize World Organization for Animal Health (OIE) guidelines related to regionalization and accept poultry from regions in the United States unaffected by this disease. Additionally, China continued to maintain overly restrictive pathogen and residue requirements for raw meat and poultry. Consequently, U.S. exports of these products have been significantly constrained.

Biotechnology Approvals

Marginal progress was made in the regulatory approval process for agricultural products derived from biotechnology in 2017. Following a commitment made to President Trump by Chinese President Xi during their April 2017 meeting, China's National Biosafety Committee (NBC) met in May and June 2017 and issued four product approvals (two after each meeting), while not approving four other products that were subject to NBC review. Of the four products that remain pending approval in the Chinese regulatory system, two have been under review since 2011. As of March 2018, in addition to these four products, another six products are stalled at the final approval stage of NBC review. 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 biotech product approvals and the product approvals made by other countries has widened considerably over the past three years.

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 export volumes of processed corn products in 2017.

China submitted its most recent notification concerning domestic support measures to the WTO in May 2015, but it only provided information up to 2010. The United States remains concerned that the methodologies used by China to calculate support levels, particularly with regard to its price support policies and direct payments, result in underestimates of the amounts reported formally to the WTO. 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 is pursuing this case aggressively.

Tariff-rate Quota Administration

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement still 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. The United States is pursuing this case aggressively.

Value-added Tax Rebates and Related Policies

The Chinese government attempted to manage imports of primary agricultural commodities by raising or lowering the VAT rebate to manage domestic supplies. China sometimes reinforces its domestic objectives by imposing or retracting VATs. These practices have caused tremendous distortion and uncertainty in the global markets for corn and soybeans, as well as intermediate processed products of these commodities.

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 Laws, Regulations and Other 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, and China adopted a single official journal, to be administered by China's Ministry of Commerce, in 2006. More than 10 years later, 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 in fact all binding legal measures. In addition, China rarely publishes in the journal certain types of trade-related measures, 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 measures that appear to address this requirement. Since then, despite continuing U.S. engagement, little noticeable improvement in the publication of departmental rules for public comment appears to have taken place, even though China confirmed that those two SCLAO measures are binding on central government ministries.

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 timely (i.e., before implementation) translations of trade-related laws and administrative regulations, nor does it publish any translations of trade-related measures issued by sub-central governments at all.

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 incomplete adoption of 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

Chinese regulatory authorities' implementation of China's *Anti-monopoly Law* poses multiple challenges. One key concern relates to how the *Anti-monopoly Law* will be 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 only brought enforcement actions against provincial government-level state-owned enterprises, not any central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the *Anti-monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Overall, 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.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was \$284 million in 2017, a 60.9 percent decrease (\$443 million) over 2016. U.S. goods exports to Colombia were \$13.3 billion, up 1.6 percent (\$205 million) from the previous year. Corresponding U.S. imports from Colombia were \$13.6 billion, down 1.7 percent. Colombia was the United States' 22nd largest goods export market in 2017.

U.S. exports of services to Colombia were an estimated \$6.2 billion in 2016 (latest data available) and U.S. imports were \$3.0 billion. Sales of services in Colombia by majority U.S.-owned affiliates were \$5.3 billion in 2015 (latest data available), while sales of services in the United States by majority Colombia-owned firms were \$91 million.

U.S. foreign direct investment (FDI) in Colombia (stock) was \$6.2 billion in 2016 (latest data available), a 4.7 percent decrease from 2015. U.S. direct investment in Colombia is led by mining, manufacturing, and finance/insurance.

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 ten 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Local Certification Requirements

Colombian directives and guidelines create local certification requirements and other regulatory obstacles for U.S. companies. Decree 1595, finalized in August 2015, requires “medium and high risk” products to obtain safety conformity certifications in Colombia unless the exporting country agrees to recognize Colombia’s safety conformity certifications. To date, Colombia has not articulated the criteria for assessing product risk categories and, thus, has not clarified the scope of “medium and high risk” products. Other regulations that require local certification include measures addressing electrical installations and electrical equipment (Resolution 181331 of 2009), illumination and public lighting, toy safety (Resolution 3388 of 2008), public passenger vehicles, and fuel blends. Some of these regulations and related modifications were not notified to the WTO. Additionally, some stakeholders have expressed concerns regarding a lack of coordination among government ministries and agencies, excessive and duplicative import documentation requirements, vague guidelines, and frequently changing requirements that create uncertainty with respect to the local certification requirements. The United States has raised these issues

in WTO Technical Barriers to Trade (TBT) Committee meetings, as well as bilaterally, including in CTPA TBT Committee meetings

Cosmetic Soaps

Resolution 837 of 2017, issued jointly by the Ministry of Health and the Ministry of Environment and Sustainable Development, establishes the maximum level of phosphorus and the level of biodegradability of surfactants in detergents and soaps. The resolution also applies 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 at the WTO TBT Committee, and Colombia delayed implementation of the measure until May 5, 2018. However, cosmetic soaps continue to be included in the scope of the measure. If implemented, this final regulation would impose burdensome testing and certification requirements on these products.

Ethanol

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 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 thirty days later. After the United States asked for a reasonable implementation period of at least six months, Colombia accordingly deferred implementation for another sixty 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 regarding its concerns.

Sanitary and Phytosanitary Barriers

Rice

In April 2012, Colombia and the United States agreed that Colombia would provide access to U.S. rough rice through the Port of Barranquilla, subject to certification that the shipments were free of *Tilletia horrida* and the pre-export fumigation of shipments. Following a December 2013 report that indicated that *Tilletia horrida* had been detected in rice production areas in Colombia, Colombian authorities initiated an epidemiologic survey and determined that *Tilletia horrida* was widespread in Colombian rice production areas. In August 2017, the United States and Colombia reached an agreement to allow for expanded market access for U.S. exports of rough rice, which rescinded the requirements of the 2012 agreement.

Risk Categorization and Associated Import Requirements

Through an 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 reiterated concerns with Colombia's risk classification system under Resolution 719 during the June 2017 CTPA Committee on Sanitary and Phytosanitary (SPS) meeting. The United States will continue to engage with Colombia and affected stakeholders regarding the impact of these requirements, as well as the process for recognition of the U.S. food safety system.

Ministry of Health Decree 539 of March 12, 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 regulation to the WTO that amends 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. Recognition of the U.S. food safety system will exempt federally regulated establishments from individual inspection and approval requirements. The United States welcomed the addition of this provision to Decree 539 during the June 2017 meeting of the CTPA SPS Committee, and noted that it is interested in better understanding how Colombia plans to undertake positive recognition of the U.S. food safety system. However, as of the end of December 2017, the final version of this new decree has yet to be published.

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 over 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 Measures

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 ("1x1") had been scrapped and its registration cancelled. 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 a billion dollars' worth of sales since March 2013.

In September 2016, Colombia issued Decree 1517, which indicates that the "1x1" scrappage policy will 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 provides that the interim system will 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.

Under the interim system, buyers can apply to receive the scrapping certificate required to import a new truck via a government-administered process. They will pay a fee equivalent to 15 percent of the value of the new truck to access the certificate, and Colombia will continue 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. Colombia's Ministry of Transport reported in December 2017 that it would establish exceptions to this limit on registrations. Subsequently, an internal instruction memo issued by the Ministry of Transport provides an opportunity to request exceptions from the Ministry. However, the requester must provide justification for the request, and the criteria for granting or rejecting exceptions remain unclear and provide little certainty for to stakeholders.

The United States continued to raise the scrappage requirement bilaterally in 2017. The United States also raised the lack of a transparent public consultation process in multiple fora and at senior and working levels, including in the Organization for Economic Cooperation and Development (OECD) Trade Committee in the context of Colombia's accession to the OECD. The United States will continue to engage with Colombia regarding the scrappage policy, including with respect to changes to the policy, and press Colombia for an effective resolution of this issue to reopen the market to U.S. products.

Internal Taxes on Distilled Spirits and Alcohol Monopolies

Under the previous tax regime (Law 788 of 2002, Chapter V, as amended by Law 1393 of 2010), Colombia assessed a consumption tax on distilled spirits with a system of specific rates per degree (half percentage point) of alcohol strength, and arbitrary breakpoints based on alcohol content which appeared to result in a lower tax rate on spirits produced locally. While the CTPA provides certain exceptions for Colombia's measures relating to the taxation of alcoholic beverages, those exceptions expired May 15, 2016. The European Union sought consultations with Colombia regarding its taxation and departmental practices with respect to imported spirits under the WTO dispute settlement mechanism in January 2016. The United States participated in those consultations, held in March 2016, as a third party. On December 19, 2016, President Santos signed into law a bill reforming tax treatment of distilled spirits and oversight of monopolies at the department (provincial government) level.

The new law, effective January 1, 2017, replaced the previous tax structure (including the breakpoints) with a combination of a "specific tax" based on alcohol content and an *ad valorem* tax on the retail price. The law also includes provisions that are aimed at disciplining practices of the department level alcohol monopolies. However, the United States continues to have questions on the process for aligning department-level practices with the new law, and has asked in particular that Colombia ensure the non-discriminatory application of provisions regarding "exploitation rights." The Ministry of Finance issued a draft circular on this issue for public comment in December 2017, but the circular has not been finalized. Importers also are seeking greater clarity on technical provisions, 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. The United States will continue to monitor the implementation of the new legislation and engage with Colombia regarding U.S. concerns.

Mobile Phones Decree

A U.S. branded phone manufacturer continues to report that measures designed to prevent the theft of mobile phones do not achieve their intended aim and impose unnecessary burdens on importers. On October 16, 2015, Colombia's trade ministry published Decree 2025, which "establishes measures to control the import and export of smart phones and their parts" as part of its strategy to address phone theft.

The decree established extensive administrative requirements for trade in mobile phones and created barriers to export them even for legitimate purposes, such as warranty repairs or recycling. In particular, the decree mandated that each mobile phone have a government-issued International Mobile Equipment Identity (IMEI) verification certificate at the time of import and required all importers and exporters to pre-register with the National Police in order to trade in mobile phones. Additionally, the decree prohibited all imports and exports of mobile devices and parts via mail or express delivery (often the method of shipment for purchases by private individuals), and travelers entering Colombia were limited to carrying no more than three devices as personal items.

On December 23, 2016, the trade ministry published Decree 2142, which modifies a number of Decree 2025's provisions. In particular, Decree 2142 reverses the prohibition on imports of mobile devices and parts via mail or express delivery, with some limitations as to the number of devices that can be shipped by those means, and allows more flexibility with respect to the documentary requirements for the export of used phones, *e.g.*, for servicing and repair, or recycling and safe disposal of electronic waste. (The limit on how many devices travelers can carry into the country remains in place, as do the requirements with respect to IMEI verification and registration of importers and exporters with the National Police.) However, concerns remain regarding the government of Colombia's operational capacity to implement the system established in Decree 2025 of 2015, as amended. In 2017 a U.S. branded phone manufacturer reported that, in some cases, Colombia's database wrongly includes IMEI numbers for phones that have not been previously imported. New phones with an IMEI number included in the database, even incorrectly, must be removed from import shipments, a disruptive and costly process. The United States will continue to monitor the implementation of these decrees and engage with Colombia as appropriate to facilitate legitimate trade in cell phones.

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 that also entered into force in August 2017 (Resolution 4490 of September 2016, as modified by 0553 of March 2017), does not formally require clinical trials for assessing the potential for unwanted immune responses (immunogenicity) of biosimilars. 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 is currently developing implementing regulations for the relevant provisions, and in October 2017 published for public comment a draft presidential decree related to this issue. This decree was enacted on March 5, 2018.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Colombia remained on the Watch List in the 2017 Special 301 Report, and an Out-of-Cycle Review was initiated to assess Colombia's commitment to the intellectual property provisions of the CTPA and to monitor the implementation of the National Development Plan. Colombia's implementation of certain intellectual property rights (IPR) provisions of the CTPA was interrupted in 2013 when the Colombian Constitutional Court invalidated on procedural grounds a law enacting certain obligations under the CTPA. Colombia redrafted copyright amendments in November 2015, published the copyright amendments for public comment in September 2016, and introduced them to congress in October 2017, but as of December 2017, when the legislative session ended, the legislature held only one of the four debates required before the bill can move to a formal vote. The legislative session reconvenes in mid-March 2018. Additionally, Colombia has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants, or developed Internet service provider liability limitations and notice and takedown procedures. The United States will continue to engage with Colombia at political and technical levels to complete implementation as soon as possible.

Companies remain concerned with widespread intellectual property infringement, including unauthorized recordings in movie theaters, allowing performance of audiovisual works on buses without payment to rights holders, counterfeiting and piracy operations at the border and in the San Andresitos markets, online and mobile piracy, and the use of micro-chipped free-to-air boxes used exclusively for pirating broadcasting signals. Stakeholders are also concerned about Colombia's linkage of pricing consideration as a variable for marketing approval on pharmaceutical patents. The National Development Plan included a requirement to develop an IPR enforcement policy to help guide, coordinate, and raise awareness of IPR enforcement. However, other provisions of the National Development Plan, depending on how they are interpreted and implemented, may structurally undermine innovation and intellectual property rights. The United States will continue to engage bilaterally to resolve these issues.

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 in order to fulfil 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. These regulatory fees are used to finance the operation of state-owned broadcasters. ANTV has proposed to change the method of calculation from a current fee per subscriber methodology to a fee based on the gross revenues of the supplier. In addition, ANTV has included a higher assessed fee for any supplier whose subscribers reside primarily in large cities, which largely impacts one U.S.-owned supplier. The United States has encouraged Colombia to consider carefully public comments received concerning this proposed change and to ensure that fees are assessed in an equal and reasonable manner to all providers of video services.

Telecommunications

Roaming

In Section 1377 Reports, USTR has expressed concerns with Colombia's enforcement of roaming arrangements, particularly with regard to arrangements between dominant providers and their smaller competitors. Roaming arrangements can be especially critical for new entrants and smaller competitors because they rely on roaming to supplement their network in their build-out phase, in order to offer a commercially viable service. In February 2017, the Communication Regulation Commission (CRC) amended its regulation on wholesale voice and data roaming services in Colombia, with a new pricing methodology that will remain in effect until November 2018. A U.S.-invested operator in Colombia has raised concerns that the brief remaining duration of the asymmetrical tariff it is afforded under this regulation is insufficient to ensure a competitive market for mobile services given the difficulty it has had in obtaining and enforcing roaming arrangements with its competitors since entering the market in Colombia. The United States will look to Colombia to ensure the 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

In February 2017, the Ministry of Information Technologies and Communication (MinTIC) published draft rules for an auction of the 700 MHz spectrum band that would create one 30 MHz block, one 20 MHz block, and two 10 MHz blocks. This band can be particularly useful for new entrants because of technical characteristics that support coverage of larger geographic areas with less infrastructure, enabling a new entrant to more quickly and more economically build up its customer base, particularly where population density is lower. In December 2017, MinTIC affirmed Decree 2194 raising the limit on the amount of spectrum that any supplier in Colombia can acquire from 30 MHz to 45 MHz for low bands (below 1GHz) and from 85 MHz to 90 MHz for high bands (above 1 GHz). The draft auction rules, in combination with this change in the spectrum cap, would allow incumbent suppliers in Colombia the opportunity to bid on and acquire all of the spectrum in this band, to the potential exclusion of new entrants to the market. Given the importance of this band to new entrants, the OECD in its 2014 review of Colombia's Telecommunications Policy and Regulation recommended that the auction of this band should include conditions that specifically allow small operators to have access to it. MinTIC officials have indicated that an updated version of the draft auction rules will be published for public comment before finalizing the rules for the auction. The United States encourages Colombia to do so expeditiously and to give full consideration to public comment in finalizing rules for the auction, including 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.

BARRIERS TO DIGITAL TRADE

Movement of Data

Colombia's Superintendency of Industry and Trade (SIC) has the legal mandate to ensure compliance with Data Protection Law 1581 of 2012. In February 2017, the SIC issued a draft circular that defined general criteria reflecting the SIC's view of adequate data protection, detailed responsibilities of data controllers with respect to international data transfers, and provided a list of countries that meet data protection guidelines. This list did not include the United States, raising serious concerns about the basis for such a decision and its potential effects on U.S. businesses. Following comments from concerned stakeholders and engagement by U.S. officials, the SIC released in August 2017 the final circular, which included the United States on the list of countries that provide an adequate level of data protection. This document brought regulatory clarity to concerned stakeholders, addressing both data transfers and transmissions. The United States will continue to monitor any efforts to roll back or alter Colombia's current regulatory framework with respect to data protection, including the status of draft legislation that could introduce new concerns.

Other Issues

A recent Constitutional Court Case that directed a large U.S. provider of the Internet-enabled services to register with the Colombian government as a telecommunications service provider could have far-reaching implications for many Internet-enabled services particularly for any such services or suppliers providing a communications like functionality as part of one or more of the services offered in Colombia.

In the CTPA, both Parties recognized that information services (*i.e.*, the offering of a capability for generating , acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications) should not be treated as public telecommunications services and that the parties would not apply many aspects of traditional regulation of public telecommunications services to information services. The United States urges Colombia to implement this court decision in light of its obligations under the CTPA regarding information services.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was \$1.7 billion in 2017, a 8.6 percent increase (\$132 million) over 2016. U.S. goods exports to Costa Rica were \$6.2 billion, up 6.2 percent (\$363 million) from the previous year. Corresponding U.S. imports from Costa Rica were \$4.6 billion, up 5.3 percent. Costa Rica was the United States' 38th largest goods export market in 2017.

U.S. exports of services to Costa Rica were an estimated \$2.1 billion in 2016 (latest data available) and U.S. imports were \$2.9 billion. Sales of services in Costa Rica by majority U.S.-owned affiliates were \$1.9 billion in 2015 (latest data available), while sales of services in the United States by majority Costa Rica-owned firms were \$50 million.

U.S. foreign direct investment (FDI) in Costa Rica (stock) was \$1.6 billion in 2016 (latest data available), a 10.0 percent increase from 2015. U.S. direct investment in Costa Rica is led by manufacturing, information, and prof., scientific, and tech. 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, as well as 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

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. However, U.S. manufacturers have difficulty in complying with this requirement because a U.S. Federal Government certificate of this kind does not exist. U.S. companies have been able, in some cases, to comply with the requirement by submitting documents from U.S. 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 gain the approval necessary 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 or 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 foreign governments 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.

Telecommunications Equipment

Costa Rica's telecommunications regulator (SUTEL) imposes a requirement for what can be frequent retesting and recertification of telecommunications hardware, which are required 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.

Sanitary and Phytosanitary Barriers

Costa Rica has decreased the use of sanitary and phytosanitary (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. 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 are complaining regarding 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. APHIS is addressing this issue with Costa Rica's Quarantine Department.

In September 2013, Costa Rica banned the import of fresh potatoes from the United States, allegedly due to excess soil in some shipments and the presence of "zebra chip," a disease that causes striping of potatoes. Costa Rica reopened the market to U.S. chipping potatoes in February 2016 after the negotiation of new import requirements. Imports resumed in September 2016. According to U.S. industry sources, there were problems with the implementation of the import protocol by the Costa Rican government. However, those problems have been resolved, and the Costa Rican government is permitting imports of chipping potatoes under the negotiated protocol.

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 last year. Although Costa Rica eventually issued all pending

permits, the untimely release of the permits during local harvest time caused a temporary (and unnecessary) glut of onions in the market. The United States will continue to monitor this issue to avoid this type of delay from occurring in the future.

IMPORT POLICIES

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. The Costa Rican government 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 Rican issuance of these permits occurs in a timely manner.

Nontariff Measures

Customs 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, Costa Rican Customs continues to require that SPS documents be submitted in hard copy at the time of import. The U.S. Government 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 April 20, 2017, which later was approved by the Costa Rican Legislative Assembly and the Costa Rican Constitutional Court. The law approving the ratification includes provisions to assist with TFA implementation, including the establishment of a trade facilitation council, which would include private sector representatives and have the authority to make decisions. The implementation of the TFA requires strengthening the quality and control over customs process 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 responsibilities regarding foreign trade and the private sector.

Internal Taxes on Distilled Spirits

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 is 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.

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 ICT and insurance sectors. A leading business association is currently pursuing administrative action against the government's use of Article 2 of the Administrative Contracting Law to preferentially contract state-owned entities, using as an example the Finance Ministry award of an electronic billing contract to a public entity at well above the costs offered by private sector players. Private sector insurance companies and brokers believe that the Costa Rican government preferentially contracts 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, get competitive quotes for insurance policies. The Social Security Administration ("CCSS") contracted a private insurance policy in what may be a trend towards competitive insurance contracting by government entities. The United States will continue to monitor Costa Rica's government procurement practices to ensure they are applied consistent with CAFTA-DR obligations.

The electronic procurement platform "Mer-link," now known as "SICOP," 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. More than 100 government entities have adopted the program to date. However, implementation has been slow.

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

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 (a) 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 (b) a 50 percent income tax exemption for the following six year period instead of the four year period for companies inside the GMA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica remained on the Special 301 Report Watch List in 2017. 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. Outstanding concerns include the need to provide greater transparency and clarity as to the scope of protections for Geographical Indications to alleviate market access uncertainty and to end government use of unlicensed software. The United States urges Costa Rica to take effective action against any notorious online markets within its jurisdiction that specialize in unlicensed works and to address the concern that Costa Rican law still permits online service providers up to 45 days to forward infringement notices to subscribers. Costa Rica also needs to otherwise bolster IPR enforcement against high levels of online piracy and physical piracy and address cumbersome border measure processes to deter counterfeit and pirated goods. The United States strongly encourages Costa Rica to build on these initial positive steps it has taken to protect and enforce IPR, and to continue with bilateral discussions of these issues and the development of a clear plan that will demonstrate additional progress to tackle longstanding problems.

SERVICES BARRIERS

Insurance

Private insurance companies continue to face challenges in light of the market power that INS derives from its former monopoly position. Specific concerns relate to deceptive advertising by INS and a cumbersome and nontransparent product approval process.

Telecommunications

The Telecommunications Superintendence (SUTEL) successfully completed the auction of 70 Megahertz (MHz) of 1800 MHz and 1900/2100 MHz bands of radio spectrum in July 2017 for an aggregate price of \$43 million. The Ministry of Science and Technology (MICIT) will subsequently award the spectrum. The winners Telefonica and Claro were the only competitors in the auction and split the spectrum while together paying the minimum base price.

In September 2017, SUTEL declared the mobile market, at the retail level, to be sufficiently competitive to obviate economic regulation, pursuant to Article 73 of the Law No. 7593 on the Regulatory Authority of Public Services. In October 2017, SUTEL affirmed its finding despite a challenge by the Ombudsman Office of Costa Rica that the decision did not comply with the General Telecommunications Law, and suffered from 'serious and insurmountable defects in motive.' SUTEL previously had made a similar determination for four other markets: international telephony, fixed Internet, international roaming, and telecommunications transit.

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

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.

In July 2009, Costa Rica notified levels of agricultural domestic support to the WTO for 2007 that were above its \$15.9 million Total Aggregate Measurement of Support (TAMS) ceiling on trade-distorting domestic support. Costa Rica's subsequent notifications to the WTO for the years 2008 through 2012 listed domestic support expenditures at ever increasing levels, reaching \$109.7 million in 2010. Notifications for 2014 and 2015 listed domestic support expenditures of \$60.4 million and \$4 million, respectively. Between 2009 and 2015, Costa Rica's price support for rice accounted for most of its notified TAMS, and rice accounted for a majority of its notified TAMS prior to 2009. In May 2013, the government of Costa Rica issued Decree 37699-MEIC, which reduced the price support by a modest amount and stated that the then-current price support mechanism for rice would be eliminated starting in March 2014. However, in January 2014, Costa Rica delayed that deadline by a year, until March 2015. In January 2015, Costa Rica announced a four-year safeguard, imposing an additional 24.88 percent tariff on pounded rice. The safeguard amount declined annually to a final tariff of 6.22 percent for 2018. The safeguard affected out-of-quota rice imports from the United States. On February 27, 2015 the government of Costa Rica published Executive Decree 38884-MEIC, which established producer prices for dry and clean paddy rice and also set the minimum and maximum price for different presentations and qualities of milled rice, either locally produced or imported. Those prices took effect on June 8, 2015. The overarching issue of excessive domestic support for rice remains, as the reference price system does nothing to change the effective level of the support, but only changes its classification.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider to be novel or inconsistent interpretations of tax regulations and principles. Adoption of a new set of transfer-pricing regulations in September 2013 represented a significant advance by the Costa Rican government in the area of transparency and predictability. The measure, Decree 37898-H, protects the principle of free competition. In June 2016, the Costa Rican General Direction of Taxation released for public consultation the draft rules concerning annual transfer pricing. In September 2016, Resolution DGT-R-44-2016 was published in the official gazette to finalize the rules concerning the filing of an annual transfer pricing return in Costa Rica. It established that the first transfer pricing return for 2015, and the transfer pricing return for 2016 would be due on June 30, 2017. However, one week before the deadline, implementation was delayed (Resolution DGT-R-28-2017). This new resolution states that the deadline for submitting the tax return will be suspended until the Tax Administration communicates the date and the electronic means for meeting the requirement. Costa Rica's transfer pricing rules follow guidelines set by the Organization for Economic Cooperation and Development (OECD). The United States will continue to monitor implementation of the regulations and other tax measures.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was \$3.0 billion in 2017, a 1.0 percent decrease (\$30 million) over 2016. U.S. goods exports to the Dominican Republic were \$7.8 billion, up 0.5 percent (\$37 million) from the previous year. Corresponding U.S. imports from the Dominican Republic were \$4.7 billion, up 1.4 percent. The Dominican Republic was the United States' 33rd largest goods export market in 2017.

U.S. exports of services to the Dominican Republic were an estimated \$1.8 billion in 2016 (latest data available) and U.S. imports were \$4.6 billion. Sales of services in the Dominican Republic by majority U.S.-owned affiliates were \$1.0 billion in 2015 (latest data available).

U.S. foreign direct investment (FDI) in the Dominican Republic (stock) was \$1.4 billion in 2016 (latest data available), a 7.9 percent increase from 2015. U.S. direct investment in the Dominican Republic is led by wholesale trade, information, and nonbank holding companies.

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, as well as 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.

TECHNICAL BARRIERS TO TRADE

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's (MIC) and the Dominican Institute for Quality (INDOCAL) constitutes a barrier to trade. Since 2012, RTD 458 has required that imported steel rebar be subject to conformity assessment procedures in the form of sampling at the discharge port and testing by third party laboratories. 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 yielded some progress. However, the Dominican government stepped back from constructive engagement and the discussions have stalled. 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 it is expected to be extended to other products. 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.

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 on December 28, 2016, but the National Commission for Agricultural Imports also issued 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 Measures

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 service has frequently challenged the eligibility of those vehicles to be considered as originating and therefore eligible for preferential tariff treatment under the CAFTA-DR, citing 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 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.

In February 2017, the Dominican Republic formally 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 government of the Dominican Republic has yet to pass legislation to establish a National Trade Facilitation Committee (NTFC).

GOVERNMENT PROCUREMENT

The Dominican Republic is not a signatory to, nor an observer of, the WTO Agreement 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. 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 *inter alia* 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 to ensure that they are applied in a manner consistent with CAFTA-DR obligations. In June 2017, the Dominican government and the U.S. Trade and Development Agency executed a Memorandum of Understanding whereby the latter will conduct its Global Procurement Initiative (GPI) training program for Dominican procurement officials commencing in the first quarter of 2018. The GPI offers tailored instruction on best-value procurement, designed to reduce the incidence of inside-dealing and sole reliance on low price as a selection criteria.

EXPORT 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2017, 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 effective intellectual property rights (IPR) protection and enforcement. Positive developments include some 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

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, including its failure to ensure a prompt and transparent 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. U.S. firms have also expressed concerns that the adoption by the Dominican government in July 2017 of a new tax on carriers for international voice and SMS traffic to the Dominican Republic to fund the national emergency system (911) has the effect of raising termination rates above cost and unfairly targets U.S. and other foreign consumers. The United States continues to work with the Dominican Republic to ensure that it fulfills its obligations for an open and competitive telecommunications sector.

OTHER BARRIERS

Many U.S. firms and citizens have expressed concerns that corruption in government, including in the judiciary, continues to constrain successful investment in the Dominican Republic. Administrative and judicial decision-making at times is perceived as inconsistent, nontransparent, and overly time-consuming.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$1.6 billion in 2017, a 16.0 percent decrease (\$305 million) over 2016. U.S. goods exports to Ecuador were \$4.8 billion, up 15.0 percent (\$625 million) from the previous year. Corresponding U.S. imports from Ecuador were \$6.4 billion, up 5.3 percent. Ecuador was the United States' 43rd largest goods export market in 2017.

Sales of services in Ecuador by majority U.S.-owned affiliates were \$1.1 billion in 2015 (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 \$509 million in 2016 (latest data available), a 3.7 percent increase from 2015. U.S. direct investment in Ecuador is led by mining, manufacturing, and finance/insurance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Batteries and Secondary Cells

A revision of Ecuadorian Regulation RTE INEN 105 (1R) dealing with batteries and secondary cells (rechargeable batteries) entered into force on December 28, 2016. The revision provides alternatives for testing for batteries, including by laboratories located in the United States; allows any testing method to be used to comply with the maximum allowed limits for mercury and cadmium; and, provides three options to file for the conformity assessment certificate, including self-certification by the importer. Exporters have found the revised regulation resolved their concerns regarding compulsory standards.

Processed Foods – Quality Compliance and Prior Authorization Requirements

Ecuador imposes a variety of standards-related measures depending on the type of processed food. Executive Decree No. 4522, issued in November 2013 by the Ministry of Public Health's (MoPH) 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. Ecuador requires a certificate demonstrating compliance with the labeling provisions pursuant to Committee of Foreign Trade (COMEX) Resolution 116 issued December 4, 2013. A separate certificate of recognition is required for food products for which the Ecuadorian Standards Institute (INEN) has issued a standard. 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. In the case of 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 to the certificates, including the use of State or Federal Certificates of Free Sale, a Supplier's Declaration of Conformity, or a determination of equivalence with INEN's requirements.

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 a sanitary certificate issued by AGROCALIDAD. For over 50 food and agricultural products, Ecuador also requires prior import authorization from the Ministry of Agriculture (MAG) or the MoPH, or both, depending on the particular product. The MAG authorization itself requires several internal approvals. Ecuador's prior authorization system is vulnerable to lobbying by domestic producers seeking to block or impede imports, and raises questions regarding the underlying scientific justification and consistency with World Organization for Animal Health (OIE) and Codex Alimentarius Commission standards.

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.

Poultry Products

AGROCALIDAD lifted a 2015 ban on U.S. poultry products related to highly pathogenic avian influenza (HPAI) in August 2017, but the National Customs Service of Ecuador (SENAE) has yet to update its database to allow for poultry imports from the State of Tennessee. As a result, some U.S. producers are still unable to export poultry products to Ecuador.

Establishment of Registration Requirements

AGROCALIDAD issued Resolution 217 in September 2016, which 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 the information needed to register is not readily available since much of the information required by AGROCALIDAD 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.

IMPORT POLICIES

Ecuador has imposed 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 circumstances worsened and economic growth declined. These measures, such as tariff surcharges implemented in March 2015 that remain in effect, contributed to sharply reduced U.S. exports to Ecuador. The measures also created uncertainty in Ecuador's market, which can discourage investment, penalize Ecuadorian workers and businesses, and limit consumer choices of competitively priced, high quality goods and services. However, Ecuador eliminated certain import quotas beginning January 1, 2017, which improved the competitive environment for automobiles and cell phones.

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.

The United States has objected to Ecuador's restrictions on trade in a variety of fora – bilaterally, through various WTO committees, and in coordination with other countries. The United States will continue to press Ecuador to reverse these policies in light of its international commitments.

Tariffs and Customs Fees

In 2015, Ecuador levied tariff surcharges on imported products. COMEX Resolution 011-2015 placed tariff surcharges of 5 percent to 45 percent on about 3,000 tariff lines, effective March 2015. In June 2015, Ecuador informed other WTO Members that it would phase out all tariff surcharges by June 2016. In April 2016, Ecuador postponed the elimination of the surcharges until June 2017, when they were finally removed.

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 applied simple average MFN tariff rate was 7.6 percent for industrial products and 19.6 percent for agricultural products in 2016 (latest data available). However, in light of trade restrictions Ecuador has implemented since its most recent WTO Trade Policy Review in 2011, the actual average applied MFN tariff rates might be higher. 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.

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

Consumer goods

COMEX Resolution 023, issued July 17, 2014, created a \$42 tariff 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 tariff for packages sent by Ecuadorian residents abroad, up to a limit of 12 packages or \$2,400. In addition, according to Resolution CDE-EP-CDE-EP-2017-0012-R from Empresa Publica 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 APBS affects many U.S. agricultural exports. U.S. exports such as wheat, barley, malt barley, and soybeans faced significantly higher total duties in 2017 than in previous years because of a variable levy or surcharge (on top of an *ad valorem* tariff) which 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. Although in the past Ecuador has granted a renewable three-year tariff exemption for imports of soybean meal, the preference was scheduled to expire on December 31, 2016. This exemption was renewed only toward the end of 2016, but uncertainty around its renewal caused many importers in the domestic livestock and aquaculture industries to shift purchase of soybean meal from U.S. to other suppliers. This uncertainty has benefitted South American trading partners, which increased market share in 2017 due to the preferential market access they enjoy with Ecuador.

Customs Service Fee

SENAE issued a Resolution establishing the Customs Control Service Fee, effective November 13, 2017. SENAE underscored the need to strengthen the customs control service, to combat smuggling and fraud as a reason for the implementation of this measure. The fee applies to all products entering the country, with specific exceptions such as traveler personal effects, technical aids, donations, and relief shipments (among others). The fee became effective on January 1, 2018 for postal and courier shipments. The charge, which is calculated by dividing the weight of the imported item in grams by an arbitrarily decided unit of control and then multiplying by \$0.10, allows SENAE to raise or lower the fees on individual items by manipulating the unit of control.

Despite SENAE's statements that the rate has no effect on the prices of imported products because it is neither a tariff nor a safeguard, the business sector has expressed serious concerns about the fee's calculation method; the wide margin of discretion in the setting of a control unit; and, the lack of information about the use of the funds collected. Furthermore, they argue that the fee is not compliant with either tax or transparency principles.

Nontariff Measures

Importers must register with Ecuador's National Customs Service to obtain a registration number for all products.

Agriculture

Enacted in June 2013, COMEX Resolution 102 and MAGAP Resolution 299-A impose a mandatory, cumbersome process for allocating import licenses for cheese, butter, milk, potatoes (including French fries), beef, pork, chicken, turkey, beans, sorghum, and corn. Resolution 299-A specifies that import licenses are not granted automatically, but rather are issued based on the level of domestic production relative to demand. Resolution 299-A requires importers to present to MAG their yearly import requirements for review. The review results are shared with domestic producers. Resolution 299-A prohibits imports during periods of high domestic production. Andean Community members are excluded from this requirement.

For a number of agricultural products, MAG has established consultative committees. 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.

Industry stakeholders report that import permits are issued in a trade impeding manner deliberately. A non-automatic issuance policy has been implemented that, due to the difficulty of obtaining import permits, incentivizes domestic sourcing of 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 also provide sales and consumption forecasts before it will authorize imports.

Automotive

On September 30, 2016, the Ministry of Foreign Trade announced the elimination of quotas for automobile imports beginning on January 1, 2017. This action removed a major restriction on U.S. automobile exports to Ecuador. The vehicle quotas were established in June 2012. Car sales peaked in 2011 with 139,000 units sold, and the number of total vehicles sold then contracted to 81,309 units in 2015 and 63,555 units

in 2016. The industry rebounded in 2017, selling 105,077 units. Tariff surcharges also affected the sale of motorcycles, trucks and spare parts, but sales have recovered after cancellation of the surcharges in June 2017.

Ecuador accepts U.S. Federal Motor Vehicle Safety Standards (FMVSS) in conjunction with the Blue Ribbon Letter, issued by the U.S. Department of Transportation's National Highway Transportation Safety Administration, as proof of compliance with FMVSS for automobiles manufactured in the United States.

Cellular Telephones

Quotas on imports of cellular telephones that had been in effect since 2012 were eliminated effective January 2017. The elimination of the quotas was announced in bulletin number 38-2017 published by Ecuador's customs authority. Cellphone imports dramatically peaked to \$15 million in 2017 from \$7 million in 2016 (both years, January – June). Although the elimination of the quota was a positive sign for importers, high tariffs and taxes are still an issue.

Consumer Goods

Ecuador applies a special consumption tax (ICE) on a number of products, including alcohol, perfumes, video games, firearms, airplanes, helicopters, boats, and cable television service. Many of the products to which the ICE applies are imported, while many products that are domestically produced are excluded. In October 2016, reportedly in order to facilitate approval by the European Union of Ecuador's accession to the *Trade Agreement between the European Union and its Member States and Colombia and Peru*, Ecuador modified the calculation of the ICE on alcoholic beverages to equalize the treatment of imported and domestic beverages.

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 special production runs, specifically for Ecuador, to attach labels to the shoe upper during manufacture or attach a label after manufacture in a labor intensive manner. These requirements far exceed typical local language labeling requirements. In 2017 this requirement was updated to require sewn labels only to include the material composition (percentage), country of origin, and safety instructions. For all other labeling requirements an adhesive tag suffices to comply with the law.

GOVERNMENT PROCUREMENT

Ecuador is not a signatory to the WTO Agreement on Government Procurement, but 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 manipulate 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 (<http://www.compraspublicas.gob.ec>). Foreign bidders must have a local legal representative in order to participate in government procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ecuador was moved to the Special 301 Watch List from the Priority Watch List in 2016 in recognition of the passage in August 2015 of an amendment that reinstated some criminal procedures and penalties for intellectual property crimes. However, in January 2017, Ecuador withdrew from the Intellectual Property Agreement signed with the United States in 1993. It remained on the Watch List in 2017.

Enforcement of IPR against widespread counterfeiting and piracy remains weak (including in marketplaces such as La Bahia Market in Guayaquil). 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.

The Code of the Social Economy of Knowledge, Creativity, and Innovation (COESC), legislation covering wide ranging intellectual property matters, entered into force on December 9, 2016. As of November 2017, the Ecuadorian Institute of Intellectual Property (IEPI) and the National Secretary of Higher Education, Science and Technology (SENESCYT) initiated a 30-day process of information gathering, inclusion and citizen participation in order to identify those topics of COESC that should lead to secondary regulations. IEPI expects to have the draft implementing regulations ready for SENESCYT review by the end of March; once they are approved by SENESCYT, they will be published. U.S. stakeholders have expressed concerns that the COESC legislation could negatively affect intellectual property protections and foreign investment in Ecuador, but also have recognized that legislation went through changes that revised many negative aspects, and that participation in developing underlying regulations will help balance and clarify several provisions in the law.

On August 16, 2016, IEPI issued Resolution 001-2016-CD-IEPI, which lowered exorbitant fees for registration and maintenance of patents, bringing them back into line with international practice.

On August 22, 2016, Ecuador issued a Presidential Decree (1159) to amend Presidential Decree 522, which affects the labeling of off-patent medicines. Some stakeholders continue to express concerns that the Decree may prejudice the legitimate interests of affected trademark holders. Also during 2016, Ecuador reevaluated and suspended several compulsory licenses of pharmaceutical related patents that it had issued in previous years. Industry reported last year that decrees 522 and 1159 were to be cancelled at the end of 2017, but to date they remain in effect.

The United States will continue to engage Ecuador on these issues in 2018, including through the Special 301 process.

SERVICES BARRIERS

Credit Bureaus

In September 2014, Ecuador enacted the Monetary and Financial Code, which regulates the financial, insurance, and capital markets. Article 357 of the law established the National Data Registry as the only depository of credit information to be allowed in Ecuador, but no date had been established for when Article 357 takes effect. Upon the government's determination that the National Data Registry is operational, the law, as written, would force U.S. and other foreign credit agencies to close upon 90 days' notice from the government. In December 2017, the National Assembly approved the Economic Reactivation Law, which includes a provision that the credit data registry will become the exclusive competence of the Superintendent of Banks, and that the Superintendent of Banks will control the credit data registry and be responsible for all credit rating services and restricts the private provision of credit rating services. Should the law be fully implemented, it would cause the only private-sector bureau operational in Ecuador to close.

Telecommunications

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) is exempt from the fees. CNT is owned by the government of Ecuador, is the dominant provider of fixed telecommunications services, and is the second largest supplier of subscription television services. 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

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

Withdrawal from Bilateral Investment Treaties (BITs)

U.S. investors have complained, during 2017 and in previous years, that Ecuador has failed to comply with the terms of the U.S.-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 U.S.-Ecuador BIT remains in force but will terminate on May 18, 2018, one year after the official notification. The sunset provisions of the U.S. agreement will protect current investors for 10 years following the date of termination.

Investment Climate

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. 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 incentives for mining sector investments, including fiscal stability agreements, limited VAT reimbursements, and remittance tax exceptions. The government plans to hold two licensing

rounds in 2018 to auction 16 oil blocks through production sharing agreements, the first such contracts the government will have offered since 2006.

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, value added tax, 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 can be a hindrance to successful investment in Ecuador.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was \$2.3 billion in 2017, a 18.0 percent increase (\$359 million) over 2016. U.S. goods exports to Egypt were \$4.0 billion, up 14.4 percent (\$501 million) from the previous year. Corresponding U.S. imports from Egypt were \$1.6 billion, up 9.5 percent. Egypt was the United States' 47th largest goods export market in 2017.

Sales of services in Egypt by majority U.S.-owned affiliates were \$1.1 billion in 2015 (latest data available), while sales of services in the United States by majority Egypt-owned firms were \$4 million.

U.S. foreign direct investment (FDI) in Egypt (stock) was \$22.2 billion in 2016 (latest data available), a 4.4 percent decrease from 2015.

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 47 percent since 2015. Since June 2014, Egypt has applied European Union (EU) regional emissions and safety regulatory standards for vehicles and replacement parts. This has made it difficult to export U.S. vehicles and parts to the market that meet U.S. Federal Motor Vehicle Safety Standards. 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. Federal emissions and safety regulatory standards for vehicles. After persistent engagement by the United States, Egypt confirmed in 2016 that it would reconsider U.S. Federal emissions and safety regulatory standards for vehicles if Morocco were to accept U.S. Federal emissions and safety regulatory standards, which Morocco did in July 2016. As of March 2018, Egypt has not accepted these U.S. standards, and, in fact, formally backtracked on the issue, saying at the December 2017 Trade and Investment Framework Agreement (TIFA) meeting in Cairo that it was not aware that any such understanding was reached.

In May 2014, the Egyptian Ministry of Trade and Industry issued a decree banning the importation of motorcycles and three wheel vehicles except for tricycles and chassis. The decree bans the importation of completely built units citing security concerns, yet allows the importation of semi-knocked down motorcycle chassis and engines. The United States continues to engage but the ban remains in place.

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 cites halal slaughter concerns as the reason for the ban, Egypt's General Organization for Veterinary Services (GOVS) inspected and approved 22 U.S. poultry establishments for export to Egypt in September 2013, certifying that U.S. slaughtering processes and food safety measures are in accordance with Islamic halal practices. The United States raised this issue at the December 2017 TIFA meeting in Cairo.

Foreign Manufacturers Registration

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 queue have been approved, U.S. companies are concerned about a lack of transparency in the process. The burden of registration can take up to 18 months, adds 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, most recently at the December 2017 TIFA meeting.

Sanitary and Phytosanitary Barriers

In recent years, the Egyptian government has made limited progress in taking a more scientific approach to sanitary and phytosanitary measures. However, importers of U.S. agricultural commodities continue to face unwarranted barriers.

Agricultural Biotechnology

In March 2012, Egypt's Ministry of Agriculture and Land Reclamation issued a decree suspending the cultivation of corn seeds developed through agricultural biotechnology. This 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 officially designate the United States as an approved origin for exporting seed potatoes. According to 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 raise concerns to delay approval of the United States as an origin for exporting seed potatoes to Egypt.

IMPORT POLICIES

Tariffs and Taxes

On January 26, 2016, Egypt issued Presidential Decree 26, which increased already high tariffs on approximately 100 "non-essential" items, including sunglasses, nuts, cut flowers, fireworks, grapes, strawberries, apples, pineapples, video games, chewing gum, watches, and seafood (including shrimp and caviar). On December 1, 2016, Egypt issued a second Presidential Decree, Decree 538/2016, which further increased tariffs from 40 percent to 60 percent on certain luxury items, some of which were included in the earlier decree. 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 goods given that such EU products benefit from preferential rates granted under the EU-Egypt Free Trade Agreement.

Egypt also has maintained high tariffs on a number of other 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, range from 20 percent to 30 percent. There is a 300 percent tariff on alcoholic beverages for use in the tourism sector, including for hotels, plus a 40 percent sales tax. The tariff on alcoholic beverages

for use outside the tourism sector ranges from 1,200 percent on beer, 1,800 percent on wine, and 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.

Customs Procedures

Egypt has not implemented modern information technology systems, making it difficult for its Customs Authority efficiently to target suspect shipments for inspection. The delays affect the Customs Authority's capability to process manifests and entry documentation, including for customs valuation. The lack of automated manifest collection and internal coordination, in addition to inefficient inspection procedures, has resulted in significant customs delays. Also, Egypt's practice of consularization, which requires that exporters secure a stamp from Egyptian consulates on all documents for goods exported to Egypt – at a cost of \$100 to \$150 per document – adds significant costs in money and time to such exports.

In June 2017, Egypt's Parliament endorsed Presidential Decree No. 149/2017 ratifying Egypt's accession to the WTO Trade Facilitation Agreement, which is expected to expedite the movement of goods across borders and improve customs cooperation. However, Egypt has yet to officially deposit the article of ratification to the WTO.

Import Bans and Barriers

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. Finally, 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, and submit a certificate of approval from the U.S. Food and Drug Administration 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. All medical equipment must be tested in the country of origin and proven safe. 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.

GOVERNMENT PROCUREMENT

A 1998 law regulating government procurement requires procuring entities to consider technical factors, along with price, in awarding contracts. A preference is granted to Egyptian companies whose bids are within 15 percent of the price of other bids. Also, in the 2004 small and medium sized enterprises (SMEs) development law, Egyptian SMEs were given the right to supply 10 percent of the goods and services in every government procurement contract. Moreover, the Prime Minister retains the authority to determine the terms, conditions, and rules for procurement by specific entities and may grant authorities the right to use sole-source contracting for a project. 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 2017 Special 301 Report. The United States remains concerned about the lack of enforcement of intellectual property rights (IPR), particularly with respect to the usage of pirated and counterfeit goods, including software, music, unlicensed satellite TV broadcasts, and videos. The United States continues to recommend that Egypt provide deterrent-level penalties for IPR violations, provide customs officials with *ex officio* authority to seize counterfeit and pirated goods at the border, and provide necessary additional training for enforcement officials. Further, the lack of clarity and effectiveness in processing trademark and patent applications remain obstacles for growth. Egypt notably fails to provide a transparent and reliable patent registration system and lacks an effective system for notifying interested parties of applications for marketing approval of follow-on pharmaceuticals in a manner that would allow for the early resolution of potential patent disputes. The United States urges 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 imposes barriers on U.S. service suppliers across a range of industries. In 2017, Egypt adopted a new investment law (No. 72/2017) in which the limit on non-national workers increased from 10 percent to 20 percent. In addition, Egypt restricts foreign equity in construction and transport services to 49 percent, and 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.

A decree published in September 2015 obliges freight forwarding companies to be at minimum 51 percent Egyptian-owned to be eligible for a license from the Civil Aviation Authority to operate in Egyptian airports. Licenses are issued every two years. The terms of this decree affects approximately 20 foreign companies, including several U.S. firms, providing over 80 percent of the airfreight services in Egypt. Despite this decree, however, at least one 100 percent-owned foreign company had its license renewed in 2016 without difficulty.

The United States will continue to engage Egypt on these issues.

Banking

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, as 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. In 2011, Egypt put in place strict controls on the movement of foreign currency.

Despite these ongoing concerns, in 2017, the Central Bank of Egypt revived inter-bank transfers, and eliminated withdrawal and deposit caps for foreign currency for retail and corporate clients. The Central Bank also lifted all previously-imposed restrictions on U.S. dollar deposits and withdrawals for importers of non-essential goods, another sign that bank liquidity is improving as a result of Egypt's \$12 billion three-year IMF program and a currency flotation.

Telecommunications

The state-owned telephone company, Telecom Egypt, lost its legal monopoly on the local, long-distance, and international telecommunication services in 2005. Nevertheless, Telecom Egypt continues to hold a *de facto* monopoly in the fixed line sector, primarily because the National Telecommunications Regulatory

Authority (NTRA) has not approved additional licenses to compete in this sector. The lack of competition among internet service and fixed landline providers has contributed to high prices, low Internet speeds, and poor service quality.

Courier and 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 operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms. ENPO imposes an additional fee on private couriers and express delivery services of 5 EGP (\$0.30) on all shipments under 5 kilograms.

INVESTMENT BARRIERS

Egypt adopted a new investment law (No. 72/2017), which was implemented 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.

BARRIERS TO DIGITAL TRADE

The Egyptian Parliament is considering a draft law that would require app-based transportation services to establish local servers and provide real-time data on riders and drivers to Egyptian security authorities. Infrastructure localization requirements add unnecessary costs to innovative services, while data disclosure requirements could undermine consumer trust in such services.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was \$580 million in 2017, a 32.7 percent increase (\$143 million) over 2016. U.S. goods exports to El Salvador were \$3.1 billion, up 4.0 percent (\$118 million) from the previous year. Corresponding U.S. imports from El Salvador were \$2.5 billion, down 1.0 percent. El Salvador was the United States' 51st largest goods export market in 2017.

U.S. exports of services to El Salvador were an estimated \$1.1 billion in 2016 (latest data available) and U.S. imports were \$726 million. Sales of services in El Salvador by majority U.S.-owned affiliates were \$1.5 billion in 2015 (latest data available).

U.S. foreign direct investment (FDI) in El Salvador (stock) was \$2.7 billion in 2016 (latest data available), a 2.7 percent increase from 2015.

FREE 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, as well as 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Since 2013, U.S. companies have been disadvantaged by onerous labeling regulations issued by the Ministry of Health. El Salvador requires a “Certificate of Free Sale” to register food products, cosmetics, and hygienic products in El Salvador. As no such equivalent certificate exists in the United States for these products, companies located in El Salvador seeking to import and sell U.S. products at times have difficulty complying with this requirement. The U.S. Department of Agriculture (USDA) has negotiated with the Ministry of Health the acceptance of 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 for U.S. meat and meat products. USDA is working with MAG to accept a notarized copy of the original and allow importers to use the original certificate to meet Ministry of Health requirements.

The Ministry of Health has drafted implementing regulations without adhering to its domestic procedures for consultation and notification, and then has attempted to enforce such regulations via unofficial notifications. For example, the Ministry has inserted new labeling requirements that are not contemplated by laws into implementing regulations. The most recent case is the registration requirement for bulk frozen poultry based on a Central American Technical Regulation (RTCA) for processed products. USDA is working with Ministries of Economy and Health to resolve this issue. Under the CAFTA-DR, El Salvador

granted equivalence to the U.S. sanitary inspection system for poultry and poultry products, making the registration requirement duplicative and unnecessary.

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 the same month, without notification to the WTO, and still lacks certainty as to what information must appear on the label. 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.

Internal Taxes on Distilled Spirits

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, \$0.5, \$0.9 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 appear to result in a significantly lower tax rate on locally-produced spirits.

Sanitary and Phytosanitary Barriers

Since 2015, animal product exporting facilities are subject to MAG inspection and certification every three years. As the CAFTA-DR grants equivalence to 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 animal feed and pet food additives/probiotics. The MAG started to apply this measure to imports in November 2017. USDA continues 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 is implementing the 2011 Central American Technical Regulation on sanitary and phytosanitary (SPS) Measures and Procedures (COMIECO Resolution 271-2011), which requires the inspection by Salvador authorities of U.S. packing plants that are first time exporters of non-processed products that have high sanitary risks, as determined by the government of El Salvador. This import requirement was not notified to the WTO SPS Committee by any of the Central American countries, including El Salvador. U.S. exporters have complained that this import requirement significantly increases trade costs since the exporters must incur all costs associated with plant inspections, including the travel expenses of Salvadoran technicians to the United States. Under this regulation, MAG requires Salvadoran officials to conduct on-site inspections of all U.S. facilities exporting seafood to El Salvador as a condition for import. U.S. authorities continue trying to reach an agreement with MAG to allow all U.S. origin seafood to be exempt from the plant-by-plant inspection requirement.

El Salvador does not distinguish between low- and high-risk products. Therefore, extensive laboratory tests are mandatory for all 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 different flavors 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. USAID and USDA are working with the Ministry of Agriculture to strengthen its technical capabilities to use a science-based approach for sanitary and phytosanitary standards.

IMPORT POLICIES

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-four 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 2015. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020, on rice 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. El Salvador will liberalize trade in yellow corn through a 5 percent annual expansion of the initial 350,000 metric ton TRQ for 15 years, after which unlimited quantities will be permitted. 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.

Nontariff Measures

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, and 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 2013, Salvadoran Customs implemented nonintrusive inspections with x-rays at border crossings. These inspections have resulted in detection of over 2,000 cases of anomalies, ranging from the trafficking of drugs 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. Customs also has increased the number of penalties for differences between a shipment's weight and that presented on the entry documentation, without taking into account standard weight variation and potential shipping losses or provide an opportunity to amend the entry documentation. The private and public sector Inter-union Commission for Trade Facilitation (*Cifacil*) has been promoting the implementation of measures to streamline trade, but has not made progress despite years of engagement with the government. The customs integration process between Guatemala and Honduras began in June 2017. In July 2017, El Salvador announced its intention to join the Customs Union with Guatemala and Honduras with the intention of completing negotiations by July 2018.

In 2015, El Salvador's Legislative Assembly approved a new amendment to the Customs Simplification Law, including a required \$18 per shipment processing fee for incoming packages and cargo.

GOVERNMENT PROCUREMENT

El Salvador is not a signatory to the WTO Agreement on Government Procurement, but 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.

EXPORT SUBSIDIES

El Salvador has eliminated its Export Processing Zones and Marketing Act, an export subsidy program with permanent tax exemptions based on export performance, and instituted El Salvador's Free Trade Zone Law, 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).

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 insufficient efforts to prevent the unlicensed use of software as well as inadequate enforcement against cable and satellite signal piracy. The United States continues to monitor El Salvador as they implement reforms to their Copyright law related to Collection Management Organizations that were adopted by the Legislative Assembly in 2017. The United States remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of test 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

In 2015, El Salvador eliminated its discriminatory \$0.04 per minute tax on international calls. On October 29, 2015, however, the Legislative Assembly passed the Law of Special Contribution for Citizen Security and Coexistence (CESC), which imposed a special tax of 5 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 which were 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 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. 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 'miempresa.gob.sv' allows new business entrepreneurs the ability to formalize registration within three days and maintain administrative operations all through the online platform.

OTHER BARRIERS

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 very time consuming. Bureaucratic requirements reportedly have at times been excessive and unnecessarily complex. A proposed Sovereignty and Food and Nutrition Security Law may include trade protectionist measures; the National Association of Private Enterprise (ANEP) is also concerned that this law may impose onerous advertising restrictions under the guise of protecting public nutritional health.

In 2015, the Legislative Assembly approved reforms to the Law on Credit History, which, among other changes, reduced from three years to one the maximum period that credit rating agencies could retain negative credit information in their databases, once a debt was paid in full. When the original debt is less than half of the monthly minimum wage in the trade/services sector (at this time, a debt of \$120), the negative information cannot be retained for more than six months. Credit rating agencies state that the reforms will increase their costs, raise interest rates, and hinder access to credit. There is also concern in some quarters that the Office of the Superintendent of the Financial System, which regulates credit rating agencies and can access their data, is not subject to these maximums. In July 2016, the Legislature amended the Law to establish objective criteria for the imposition of fines on rating agencies.

The Ministry of Finance requires vendors to pay a two percent charge on credit card purchases made by their customers, which the Ministry refunds to vendors through offsets on value-added taxes paid by the vendors on local purchases. However, the Ministry of Finance has not found a way to refund the two percent charge to those vendors who sell imported goods and make few or no local purchases. The United States has raised this issue with the government of El Salvador.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was \$582 million in 2017, a 1.3 percent decrease (\$8 million) over 2016. U.S. goods exports to Ethiopia were \$873 million, up 5.7 percent (\$47 million) from the previous year. Corresponding U.S. imports from Ethiopia were \$291 million, up 23.3 percent. Ethiopia was the United States' 83rd largest goods export market in 2017.

SANITARY AND PHYTOSANITARY BARRIERS

In August 2015, an amendment to the Biosafety Proclamation established a legal framework to support the cultivation of genetically engineered (GE) cotton. The government subsequently revised the proclamation's implementing directives to specify requirements for introducing GE cotton, and it is in the process of conducting field trials. Commercialization of GE cotton is expected within the next couple of years. 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.

IMPORT POLICIES

Tariffs

According to WTO Tariff Profiles, Ethiopia's average applied tariff rate is 17.4 percent. High tariffs limit U.S. participation in the market and insulate priority sectors of the economy, such as textiles and leather, from outside competition.

Nontariff Measures

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 acquiring foreign exchange.

Foreign Exchange Controls

The Central Bank of Ethiopia administers a strict foreign currency control regime, and the local currency (birr) is not freely convertible. All imports, exports, and outgoing foreign payments require a foreign exchange permit. The commercial banks are licensed to issue these permits, except for coffee. Private banks are required to manage their foreign exchange transactions through offshore accounts. 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 percent 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 also 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, enterprises owned by the ruling party, 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. The unreliability of foreign currency supply in Ethiopia's banks hampers the ability of all manufacturers to import and restricts repatriation of profits.

GOVERNMENT PROCUREMENT

Ethiopia is not a party to or an observer of the WTO Agreement on Government Procurement. However, Ethiopia has joined the U.S. Trade and Development Agency's Global Procurement Initiative which provides support for public officials in emerging economies to better understand the total cost of ownership for procurement of goods and services related to infrastructure projects, and to establish procurement practices and policies that integrate life-cycle cost analysis and best-value determination in a fair and transparent manner.

Tender announcements are usually public, but a number of major procurements do not go through a transparent tendering process. Complicated procedures, delays in decision-making, lack of public information, and the need for personal connections pose obstacles to foreign participation in government procurement. Additionally, reports of corruption in the procurement process are on the rise. U.S. firms have complained about the abrupt cancellation of procurement awards and a widespread perception of favoritism toward Chinese competitors with access to financing packages at terms unavailable on the open market. 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

While Ethiopia is a member of the World Intellectual Property Organization and has demonstrated an interest in strengthening its intellectual property rights (IPR) regime, it has not joined most of the major IPR treaties. Trademark infringement and misuse, especially in the hospitality sector, continues to be a growing problem. Given the lack of enforcement capacity and coordination amongst Ethiopian government agencies, IPR enforcement is unpredictable. Although the Ethiopian Intellectual Property Office is responsible for the administration and arbitration of IPR cases, action to confiscate or impede the sale of pirated foreign works remains inadequate. Moreover, the government of Ethiopia does not publicly track seizures of counterfeit goods, so no statistics are available.

SERVICES BARRIERS

Banking and Financial Services

Ethiopia's investment code prohibits foreign investment in banking, insurance, and financial services. 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. This is part of a continued effort by the government of Ethiopia to maintain a closed financial sector. The sector is composed of 16 private commercial banks and two public banks. Financial transactions are predominately in cash. Ethiopia's Automatic Teller Machine (ATM) network has expanded rapidly and has become accessible to customers of all banks and credit card holders. 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, the National Bank of Ethiopia (NBE) increased the minimum saving interest rate from four percent to seven percent, and limited the outstanding loan growth rate in commercial banks to 16.5 percent, which limits their loan provision for business other than export and manufacturing sectors to 16.5 percent from the preceding year. Moreover, banks are instructed to transfer 30 percent of their foreign exchange earnings to the account of NBE so that the regulator can use the foreign exchange to meet the strategic needs of the country, such as payments made to procure petroleum and sugar as well as to cover transport costs of imported items.

Telecommunications

The state-owned Ethio-Telecom maintains a monopoly on wired and wireless telecommunications services. The sector is closed to private investment, although the Value Added Service Directive No. 3/2011 of August 2011 allows private companies to provide many value-added services. Many multinational companies assert that the current quality of service in Ethiopia impedes information transfer and general business operations.

The Ministry of Communication and Information Technology allows companies and organizations whose operations are Internet-dependent or located in remote areas of the country to use 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

Logistics backlogs occur regularly, in part because the customs process remains paper-based, and also because of structural inefficiencies and alleged corruption at Ethiopian customs. Private sector contacts reported that logistics costs comprise approximately 22 percent to 27 percent of the product cost. 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 delay in the movement of goods from the container, dry goods, and oil terminals to the newly completed railhead. In addition, most goods are transported by trucks; 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 the additional rail services should help to alleviate some of the transportation delays. 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. The government announced a new Ethiopian National Logistics Strategy in 2015 that may yet open opportunities for private enterprise and provide greater efficiencies overall, but improvements have not materialized to date. A new regulation, which allows private freight forwarders to engage in a multimodal transportation system for cargo shipped in and out of Hawassa Industrial Park, is under discussion. This regulation, according to the government, serves as a pilot project to allow private companies to participate fully in the multimodal transportation system.

BARRIERS TO DIGITAL TRADE

In August and October 2016, the government of Ethiopia used its ownership of Ethio-Telecom to shut down mobile and fixed Internet services in response to protests and political unrest. After restoring access to the Internet, some websites remained blocked. The government again shut down all telecommunications networks in May and June 2017, following unrest related to the conviction of two human rights activists. A new round of protests in December 2017 led the government to block access to certain social media services. Such shutdowns slow growth, weaken innovation, dampen investment, and undermine economic confidence.

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. 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 and wholesale enterprises (*e.g.*, printing, non-specialized restaurants, and beauty shops). Some government tenders are open to foreign participation, although the process is not always transparent.

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.

OTHER BARRIERS

State of Emergency

A State of Emergency (SOE) was initiated in October 2016 after a wave of violent protests affected more than 68 large-scale investments. It was first extended in March 2017 and then lifted on August 4, 2017. Under the SOE, an executive body called the Command Post managed security policy under the leadership of the Minister of Defense. During the SOE, the Command Post held broad powers, including the ability to detain individuals, restrict speech, and restrict movement. Also under the SOE, the government authorized detention without a warrant; limited mobile data and blocked access to a wide range of Internet sites including social media, news outlets, YouTube, and Skype; and prohibited public gatherings and demonstrations. The restrictions on Internet access, although eased weeks after imposing the SOE, affected businesses and demonstrated that access could be cut at any time, for undetermined periods and without notice.

Following the lifting of the SOE, armed conflicts erupted along the boundary of Ethiopia’s Oromia and Somali regions. These led collectively to hundreds losing their lives and hundreds of thousands of people becoming internally displaced. This conflict took place at numerous points along the 1,400-kilometer boundary. There is no single catalyst for the conflicts and they do not appear related to the protests of 2015/2016 that led to the imposition of the SOE. Nevertheless, at times transportation in the affected regions was disrupted and/or halted with some goods unable to transit the border.

Parastatal and Party-affiliated Companies

Ethiopian and foreign investors alike complain about patronage networks and preferences shown to businesses owned by the government. These businesses receive preferential access to bank credit, foreign exchange, land, and procurement contracts, as well as favorable import duties.

Judiciary

Companies that operate businesses in Ethiopia assert that the judicial system remains inexperienced 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 face 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,

although the government stated that the 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 the European Union (EU) was \$151.4 billion in 2017, a 3.2 percent increase (\$4.7 billion) over 2016. U.S. goods exports to the EU were \$283.5 billion, up 5.2 percent (\$13.9 billion) from the previous year. Corresponding U.S. imports from the EU were \$434.9 billion, up 4.5 percent.

U.S. exports of services to the EU were an estimated \$239.8 billion in 2017 and U.S. imports were \$188.5 billion. Sales of services in the EU by majority U.S.-owned affiliates were \$651.2 billion in 2015 (latest data available), while sales of services in the United States by majority EU-owned firms were \$485.0 billion.

U.S. foreign direct investment (FDI) in the EU (stock) was \$2.9 trillion in 2016 (latest data available), a 9.2 percent increase from 2015. U.S. direct investment in the EU is led by nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The United States and the 28 Member States of the 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 \$5.2 billion each day of 2017, and the total stock of transatlantic investment was \$5.1 trillion in 2016.

U.S. exporters and investors nonetheless face persistent barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. Some of the most significant barriers, which have endured despite repeated efforts at resolution through bilateral consultations or WTO dispute settlement, have been highlighted in this report for many years. Many are highlighted again in this year's report.

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 more recent regulatory development processes adopted by the EU, such as for what the EU calls implemented 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 Agreement on Technical Barriers to Trade (TBT Agreement) are properly notified. The United States regularly raises concerns, both in bilateral engagement and in the context of the WTO Committee on Technical Barriers to Trade, 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 still other cases, measures are simply not notified at all, as is with the case of 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 significant concerns into consideration 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.² 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 market surveillance.³ 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 ENs under the NLF are presumed to be in conformity with the essential requirements.⁴ ENs, however, can only be developed through the European Standards Organizations (ESOs), CEN,⁵ CENELEC,⁶ and ETSI,⁷ 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 will fulfill essential requirements is often prohibitive. For example, if a manufacturer chooses not to use an EN, it needs to assemble a technical file through a costly and burdensome process demonstrating how the product meets the essential requirements. 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

² Official Journal of the European Communities, C 136, 4.6.1985, p. 1.

³ Official Journal of the European Union (OJEU), L 218, 13.8.2008, p. 30–47; OJEU, L 218, 13.8.2008, p. 82–128; OJEU, L 218, 13.8.2008, p. 21–29.

⁴ Moreover, an EN must be implemented at the national level by an EU Member State, including through the withdrawal of any conflicting national standard.

⁵ European Committee for Standardization.

⁶ European Committee for Electrotechnical Standardization.

⁷ European Telecommunications Standards Institute.

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.⁸ 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) No 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.

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, in contrast to the U.S. approach to conformity assessment, which provides national treatment to EU bodies, 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

⁸ For example, CEN/TC 438 is the technical committee for CEN that develops and publishes standards for additive manufacturing.

standard within the meaning of the TBT Agreement. For instance, as part of its free trade agreements, the EU seeks commitments affirming that any standard issued by a subset of specific standards developing organizations, none of which are domiciled in the United States, be considered an international standard.⁹ 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 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 TBT Committee, which would recognize that standards developed by organizations domiciled in the United States can be deemed international provided they are developed in accordance with relevant WTO principles.

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.

Chemicals: Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH)

The EU regulation concerning the use of chemicals known as REACH entered into force on June 1, 2007. REACH imposes extensive registration, testing, and data requirements on all chemicals manufactured or imported into the EU in quantities greater than one metric ton. 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 public 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.

⁹ For example, EU-Japan Economic Partnership Agreement, Article 6.1 (International Standards): http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156430.%20TBT%2020170703%20Japan-EU%20EPA%20Chapter_FINAL.pdf.

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 21, 2017. It contains 115 substances, which either have been evaluated or will be evaluated through 2019. 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 currently made available only to registrants. The EU should undertake greater transparency concerning the CoRAP process, including publication of CoRAP preliminary reports, which would both facilitate the EU's objectives and help reduce costs and address U.S. stakeholders' concerns.

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 Court of Justice of the European Union (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 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 articles to assist companies in meeting the requirements of the court ruling. The United States continues to assess the trade impact to 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) No 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 European 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 that are made on the basis of 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. In April 2015, after having been positively benchmarked against the European Feed Manufacturers’ Federation (FEFAC) Soy Sourcing Guidelines through the independent International Trade Center (ITC) customized benchmark, the U.S. Soybean Export Council (USSEC) submitted an application to the Commission to recognize the U.S. Soybean Sustainability Assurance Protocol (SSAP) as a voluntary certification scheme. Although SSAP also has met the Dutch Feed Industry Association’s requirements for sustainable feedstuffs, the Commission has indicated it requires additional information and analysis by the U.S. soybean industry before it can determine whether SSAP meets the RED sustainability criteria. As recently as December 2017, the Commission has continued to raise issues with USSEC’s voluntary scheme application regarding traceability and GHG calculations.

Under Article 18(4) of RED, the United States requested that the Commission enter into a bilateral agreement to accept U.S. exports of biofuel feedstock as compliant with the sustainability goals of RED. The Commission has responded that U.S. conservation laws and programs must correspond exactly to those outlined in the RED sustainability criteria if the EU is to consider U.S. exports of biofuel feedstock as compliant with RED sustainability criteria.

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). RED II was adopted by the Commission on November 30,

2016, and the Council published its proposal on December 18, 2017. The Parliament then adopted its position on January 17, 2018. It is expected the legislative process will be complete by mid-2018.

Currently, 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 \$655 million of wood pellets to the EU in 2017.

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, the Netherlands is the second largest importer of soybeans and derivatives in the world. In addition, on March 30, 2015, the Dutch government published a notice amending its regulation governing sustainability requirements for solid biomass and implementing onerous sustainability criteria for wood pellets. In particular, the criteria include a requirement for sustainability certification at the forest level, which effectively precludes 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 7 percent of total U.S. wood pellet exports in 2014 to currently less than 1 percent.

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 6 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 European Member States – Finland, France, Greece, Italy, Lithuania, Portugal, Romania, and Spain – 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 raised concerns about these measures at the past five TBT Committee meetings. In particular, the United States 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 apparent favoring of select countries, the impact on U.S. exports, and 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 January 4, 2017, the Commission published a draft implementing regulation laying down common rules regarding the indication of the country of origin or place of provenance of primary ingredients. Where appropriate, efforts should be made to harmonize regulations or standards related to prepackaged foods or non-alcoholic beverages.

Member State Measures

Italy: On April 18, 2017, Italy began implementing mandatory labeling requirements for the country of milking, packaging and processing of milk and milk used in dairy products. On May 12, 2017, Italy notified to the European Commission two draft decrees to require COOL for rice and wheat used to make pasta. Under Article 45 of Regulation (EU) No 1169/2011, the notification process requires that there be a three-month waiting period in order for the Commission to consult the Standing Committee on the Food Chain and Animal Health. However, on July 20, 2017, Italy's Ministers for Agriculture and Economic Development signed two inter-ministerial decrees ordering the provisional implementation of the COOL measures, preempting a decision by the European Commission. Both decrees entered into force in February 2018, and will be in effect for two years on a trial basis. Italy's Agriculture Minister has noted publicly that these COOL measures put Italy at the forefront of European countries using labelling as a competitive tool in the agricultural sector. The Economic Development Minister said the measures would support the "Made in Italy" brand and make Italian products more competitive in international markets. On October 21, 2017, Ministers signed a similar decree on tomato products. U.S. wheat exports to Italy totaled approximately \$117 million in 2017.

France: In early 2017, after receiving Commission approval, France implemented a COOL scheme for processed food products that contain dairy and meat. The scheme will 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.

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." The consultation document notes further that the measure would be implemented on a two-year trial basis; however, to date, Spain has not moved forward with implementation.

Romania: Effective January 1, 2018, Romania will require 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 milk, dairy, and meat products COOL law will enter 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 for an initial 18-month period.

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 will remain in force on a trial basis until December 31, 2018. At that time, Lithuania is to have provided a report to the European Commission detailing the implementation of the measure.

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) 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's 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.

Agriculture Quality Schemes

In 2012, the EU adopted Regulation 1151/2012 “on quality schemes for agricultural products and foodstuffs.” Regulation 1151/2012 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 and has 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 (GIs). 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 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’s allowing two PGI applications for “danbo” and “havarti” to proceed, despite the existence of Codex standards and objects to the 2017 registration of danbo as a PGI. The United States has further argued that new certification and labeling quality schemes not be required for 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.

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, but appears to be facing resistance to any changes that would lessen the protection of traditional terms.

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 animal, plant, or human health and life 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, 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 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 Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Following the failure by the EU to implement the recommendations of the WTO Dispute Settlement Body (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 and accounted for only 35 percent of the quota in the 2016-2017 quota year. 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.

Animal Cloning

Currently, 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.¹⁰ The Novel Foods Regulation would appear to encompass food products derived directly from cloned animals.¹¹ Food products subject to the Novel Foods Regulation require a pre-market authorization by the EU Member State decision and potentially the Commission in order to be imported or sold in the EU.

¹⁰ Regulation (EC) No 258/97.

¹¹ 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...” *Id.*

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

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 GE events have been approved (and grown) in the United States. Moreover, the length of time taken for EU approvals of new GE crops appears to be increasing.

As of January 2017, the United States is tracking 25 agricultural biotechnology product applications of corn, soybean, canola, and cotton submitted to the European Food Safety Authority (EFSA) for a scientific review, and eight such product applications waiting approval action by the EU Commission. Additionally, in the last year, EFSA has issued five inconclusive opinions, keeping these events out of risk analysis procedure until the applicant responds to new questions from EFSA.

In 2017, the EU Commission authorized 11 GE products for food or feed import use: four soybean, four corn (two were an authorization renewal), two cotton, and one rapeseed. While these new authorizations and renewals are welcome, these approvals took an average of over seven 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 the EFSA and six months for the political committee process (comitology)).

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 (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) are at risk. For instance, the United States continues to export distillers' dried grains and corn gluten feed (corn byproducts), yet such shipments could be disrupted at any moment by an LLP incident. Although three GE rice events (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 event LL62, which was originally requested in the EU in 2004, has been pending with the European 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.

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 the U.S. Department of Agriculture (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, 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 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 and the dossier is currently under review.

Export Certification

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 and ongoing work in the Asia Pacific Economic Cooperation (APEC) forum seek to limit certification to 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 their SCC requirement in the appropriate technical working groups.

EU Flavorings

In the EU, the food industry can only use flavoring substances that are on the EU flavoring list.¹² On July 29, 2015, five substances (1-methylnaphthalene, furfuryl methyl ether, difurfuryl sulphide, difurfuryl ether, and ethyl furfuryl ether) were deleted from the list. These five substances are generally recognized as safe (GRAS) by the Flavor and Extract Manufacturers Association (FEMA) for their intended use as flavoring substances. FEMA makes a GRAS determination following an expert panel's evaluation of the substance. The expert panel includes experts in toxicology, organic chemistry, biochemistry, metabolism, and pathology. Accordingly, the United States and other countries, including China, Japan, Brazil, and Mexico, accept the use of flavorings deemed by FEMA to be GRAS. In addition, these five substances have already been evaluated, or are under consideration by, other safety assessment bodies such as JECFA. The United States will continue to raise this issue with the EU.

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). Between 2002 and the present, the EU has made modifications to its regulations and implementation practices governing animal

¹² See Annex I of Regulation 1334/2008) & Regulation 872/2012.

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 are not 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. Currently, 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 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 these 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. 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) No. 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 European 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 EC 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 Committee 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. 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 plant protection products criteria have been under scrutiny by the European Parliament and Council since that time, which have until April 2018 to raise any objections prior to final adoption. The biocidal products criteria have been published and will apply from June 7, 2018. and the plant protection products criteria have been under scrutiny by the European Parliament and Council. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

Pesticide Maximum Residue Limits

Maximum Residue Limits (MRLs) and import tolerances are established under separate legislation, Regulation (EC) No. 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 currently conducting an evaluation of existing legislation on plant protection products and pesticide residues, through a Regulatory Fitness and Performance (REFIT) 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. 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.

Fosetyl-aluminum (Fosetyl-al)

Fosetyl-al is a fungicide that is not authorized to be used on nut trees in the United States. The United States does allow the use of phosphonate fertilizers on nut trees, however, because such fertilizers have low toxicity. Residues of phosphonic acid on crops such as tree nuts could result from the use of fungicides or fertilizers containing phosphonic acid. In late 2013, the Commission changed the designation of phosphonates as both a fertilizer and pesticide to only a pesticide. In doing so, residue levels detected on crops resulting from either pesticide or fertilizer use would be covered under the same MRL. However, after changing the designation, the Commission did not extend the number of crops covered by the MRL to include those crops that might be grown with phosphonate fertilizers. The application of the existing fosetyl-al MRL without extending the crops covered by the MRL could result in several U.S. nuts and fruits exceeding the MRL and thus being prohibited from the EU market.

On November 9, 2015, the PAFF approved the draft Commission Regulation to extend the temporary MRL of 75 mg/kg for almonds, cashew nuts, hazelnuts, macadamia, pistachios, and walnuts – but not pecans – until March 1, 2019. Under the higher MRL, U.S. trade is able to continue. The draft act was formally adopted by the Commission on January 25, 2016, but made retroactive to January 1, 2016, to minimize trade disruptions. The Commission instructed Member States to follow this guidance for import checks and sampling. An import tolerance application to replace the temporary MRL for tree nuts is under currently under review in the EU.

The United States was pleased by the extension of the temporary MRL for certain tree nuts. However, a number of other U.S. producers were affected as a result of the temporary fosetyl-al MRL reverting to the default level of 2 mg/kg. For example, exports of fresh and processed commodities such as stone fruits (apricots, cherries, peaches, and plums), blueberries, figs, and papayas became subject to the default MRL as of January 1, 2016. The berry industry is gathering residue monitoring data and preparing a dossier to

submit to the Commission in support of a higher MRL in early 2018, but in the meantime, more than \$100 million of fresh and dried fruit and berry exports (including \$68 million of dried plums alone) may no longer be able to enter the EU.

Diphenylamine

In 2009, the EU removed Diphenylamine as a plant protection product authorized for use within the EU. Subsequently, the EU established a temporary MRL of 0.1 parts per million (ppm) for Diphenylamine on apples and pears. The United States and Codex have a harmonized standard of 10 ppm for apples and 5 ppm for pear. The EU MRL was implemented on March 2, 2014, and affects both domestic and imported products. In January 2016, the MRL was extended for two additional years and will be reviewed in accordance with monitoring data available by January 22, 2018, after which time the EU may set an even lower MRL. The MRL of 0.1 ppm already greatly limits the use of Diphenylamine on U.S. products destined for the EU. Further reducing the MRL below 0.1 ppm has no basis in public health protection, given that the United States and Codex have found residue levels ten times higher than the current EU MRL for apples to be safe for consumers. Such a low MRL could also result in rejection of untreated fruit due to inadvertent cross-contamination during handling and storage. Without the use of Diphenylamine or a workable MRL that accounts for cross contamination, the European market is significantly limited for U.S. apple and pear exports. The United States will continue to engage the EU regarding this issue.

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 (Spain, Portugal, the Czech Republic, Slovakia, and Romania) that grew GE corn opted out.¹³ As of 2017, only Spain and Portugal 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, Slovenia, and Poland. 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: 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.

¹³ Source: USDA FAS, GAIN Report: EU28: 19 European Countries Restrict the Cultivation of GE Crops.

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 (ANSES) 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 27, 2017, France reinstated an April 22-December 31, 2016, ban on the import and sales of cherries from countries where dimethoate – a pesticide and acaricide (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 Spain and Germany) 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 post harvest 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 glyphosate in three years, despite the fact that the EU reauthorized the chemical’s use for five years.

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.

MARKET ACCESS

Tariffs

The EU’s average applied MFN tariff rate is 4.8 percent. The average agricultural tariff rate is 10.9 percent, and the average non-agricultural rate is 3.9 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 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.

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 policies 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. pharmaceutical companies have expressed concern regarding non-transparent decisions by the Austrian Social Insurance Carriers Association (HVB). In a system approved in 2016, the EU average price was set as a ceiling for price negotiations, essentially ensuring a below-average price outcome for pharmaceutical products. The HVB also agreed to a rebate agreement with producers of branded medicine (not demanded of generic drug producers), which requires a so-called “solidarity contribution” for the sector (\$148 million in 2016, and even up to \$190 million subject to a growth-related calculation method in 2017 and again in 2018). This “contribution” is a *de facto* prerequisite to receiving reimbursement for prescribed drugs.

Belgium: Over the past 15 years, U.S. pharmaceutical companies have 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. The Pact for the Future, signed between the federal government and the pharmaceutical industry in July 2015, addressed some of these concerns. Still, the budget measures of the Pact are very strict, while the initiatives that purported to lead to faster access of new innovative drugs are being implemented at a much slower pace. The companies have 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 claw back tax (an additional 3.29 percent of turnover as initially defined in 2017), as exemplifying such concerns. The claw back tax system was changed in 2017, and since is defined as 2.5 percent of the total reimbursable drug budget, instead of a fixed cap of €100 million (\$112.4 million). This has led to a small increase of the claw back tax to €101.4 million (\$113.9 million). In 2017, these taxes amounted to €370 million (\$415.7 million). The Belgian government revoked a plan to abolish a 1 percent crisis tax during the 2017 budget discussions and imposed an additional €187 million (\$210.1 million) savings in order to respect the budgetary trajectory set in the Pact for the Future. Overall, pharmaceutical companies contributed about 80 percent of the budget cuts in the Belgian healthcare system in 2017. 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.

Bulgaria: U.S. pharmaceutical companies also expressed concerns about the government’s one-year moratorium on payments for newly-patented and innovative treatments, which the government introduced for 2018 in an effort to contain healthcare costs. The first Bulgarian government e-health tender was fast-tracked in 2017 for hospital purchase of cancer pharmaceuticals worth \$518 million, but it is currently 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.

Czech Republic: While pharmaceutical approvals in the Czech Republic often exceed the EU timetables, U.S. stakeholders report that the time required for such approvals has decreased incrementally in recent years. Regarding the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, U.S. stakeholders continue to express concerns about such determinations. For example, U.S. stakeholders continue to raise questions regarding the Czech government's practice of setting maximum medicine prices based on the average of the three lowest prices in a basket of countries (a group of 17 Member States as of January 1, 2018). Such determinations should be made transparently and with meaningful opportunities for stakeholder input, as well as engagement by Czech authorities with stakeholders regarding concerns about whether such determinations reflect market circumstances in the Czech Republic or adequately incentivize innovation in research and development of pharmaceutical products. Additionally, the United States urges the Czech Republic to engage meaningfully with stakeholders regarding their concerns that such policies incentivize third parties to re-export pharmaceuticals to third-country markets, where they are sold at a profit.

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 (SUKL) can determine the reimbursement price. Czech medical societies and patient groups publically 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 1.5 percent from 2015 to 2016 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.

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 claw back 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 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.

Stakeholders also have raised concerns regarding delays in market approval for pharmaceutical products and payments for medical devices. For example, it can take more than two years for new pharmaceutical products to reach the Italian market. 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 complain 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 reimbursement law that would move from a cost recovery pricing model to a price justification pricing model for so-called "orphan drugs." The United States urges Poland to engage meaningfully with stakeholders regarding their concerns that the new law could potentially put confidential commercial information at risk of disclosure.

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 2017 and concluded the process of developing treatment protocols to make 19 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 create parallel trade problems. The claw back tax, equivalent to 19.42 percent of total gross sales for the third quarter of 2017, 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 claw back tax.

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. U.S. stakeholders report that this

methodology incentivizes third parties to re-export pharmaceuticals to third-country 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.

Uranium

The United States is concerned that non-transparent EU policies may restrict the import into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. The EU appears to limit imports of enriched uranium in accordance with the terms of the Corfu Declaration, a joint 1994 European Council and European Commission policy statement that has never been made public or notified to the WTO. The Corfu Declaration appears to limit the acquisition of non-EU sources of supply of enriched uranium, reportedly by reserving 80 percent of the EU civilian enriched uranium market for European suppliers. The United States has conveyed to the Commission its concerns about the non-transparent nature of the Corfu Declaration and its application.

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 U.S.-EU 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its Digital Single Market (DSM) Strategy, on September 14, 2016, the European Community issued a package of proposals aimed at updating and reforming EU rules related to 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. Discussions on proposals in the package continue, including a proposed directive on Copyright in the DSM (COM(2016) 593 final) and a draft regulation laying down rules applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programs (COM(2016) 594 final). In addition, the Commission published a communication on promoting a fair, efficient, and competitive European copyright-based economy in the DSM (COM(2016) 592 final).

The United States continues to work with the EU and its Member States on copyright issues, which may raise concerns from a trade perspective, and is following implementation of the copyright package closely including the following provisions:

- A new right for press publishers: According to the Commission, the contribution of publishers in producing press publications needs to be recognized and further encouraged to ensure the sustainability of the publishing industry. The Commission proposed the introduction of harmonized rights and remuneration for publishers related to copyright for the reproduction and making available to the public of press publications in the online environment.
- “Value gap” provision: Online service providers that store and provide access to the public to copyright-protected works uploaded by their users would be obligated to deploy means to automatically detect songs or audiovisual works that rights holders have identified and agreed with the platforms either to authorize or remove.
- Mandatory exceptions in the field of research and education: The proposal includes an exception for public interest research institutes regarding the use of text and data mining technologies for the purposes of scientific research, as well as exceptions for illustrations used for teaching in the online environment and for digitization of works by cultural heritage institutions.
- Rules regarding online broadcasting: Aimed at removing perceived obstacles to the creation of a

DSM, this proposal has two main provisions, which would: (1) apply a “country of origin” principle to online services related to an initial broadcast; and (2) require rights holders to license certain retransmission rights through collective rights management societies.

As these proposals continue through the decision-making process in the Parliament and Council, the United States will continue to follow developments and engage with various EU entities to ensure that the equities of U.S. stakeholders are protected.

Additionally, two DSM regulations may negatively affect territorial licensing, including the proposed “Regulation laying down rules on the exercise of copyright and related rights to online transmissions of broadcasting organizations and retransmissions of television and radio programs.” Contractual freedom to license on a territorial basis and respect for international copyright norms are of paramount importance to the audiovisual sector, where the exclusive rights to authorize or prohibit the distribution of creative works through licensing is the basis for recouping substantial upstream production costs, often through pre-sales of exploitation rights. The Portability Regulation (EU) 2017/1128 was formally adopted on June 14, 2017, and will become applicable in all Member States as of April 1, 2018. This legislation seeks to give EU subscribers to online content services the ability to access this content when temporarily present in another Member State.

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. Member States must bring the laws and administrative provisions necessary to comply with the directive into force 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 generic 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 protected designations of origin (PDOs) and protected geographical indications (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 generic 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 TRIPS Agreement. 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. These concerns also extend to 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 of 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 territory 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.

Finally, 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 European 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 generic terms.

Member State Measures

Generally, Member States maintain high levels of intellectual property rights (IPR) protection and enforcement. While some Member States made improvements in 2017, 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, which limit efforts to effectively combat trade secret theft and misappropriation. As Austria drafts legislation to implement the EU trade secrets directive, the United States will monitor developments closely and urge Austria to adopt model EU language on trade secrets.

Bulgaria: Bulgaria continues to be listed on the Special 301 Watch List in 2017. U.S. stakeholders report continued concerns about IPR enforcement, including with respect to online and cable television piracy, despite alternative paid options for both music and films. Rights holders and police try to restrict unauthorized releases of new films and music online, but IP enforcement is not a priority and administrative capacity remains low. The Special 301 Report also notes a need for legal reform to address gaps in

Bulgaria's law with respect to the exclusive rights granted to right holders, a specialized IP prosecutorial unit, and improvements to the efficiency of the judicial system in dealing with IP cases.

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 included on a Special 301 Watch List since 2009. Digital 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. Rights 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 coordinates policy and oversees implementation of laws involving IPR.

France: Online piracy continues to be a concern; however, 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, non-deterrent sentencing in criminal proceedings remains a problem.

Greece: Greece remained on the Watch List in the 2017 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 2017 Special 301 Report include widespread copyright piracy and limited and inconsistent IPR enforcement. Greece has introduced draft legislation to address online piracy but the Greek parliament has yet to pass the legislation. The Greek public sector, including the Ministry of Defense, continues to be a significant consumer of pirated U.S. software.

Italy: Italy passed robust regulations to combat online piracy violations in 2014. These regulations established a "notice and takedown" system managed by Italy's communications regulator. This framework has been widely praised by stakeholders. While copyright protection is improving, industry stakeholders report social attitudes towards online piracy remain a challenge. Additionally, the Mercato dei Venerdi in Ventimiglia was added to the 2017 Notorious Markets List as an example of a market where counterfeit and pirated goods are widespread and enforcement has been ineffective.

Poland: Stakeholders continue to identify copyright piracy online and counterfeit seeds as a significant concerns in Poland.

Romania: Romania remained on the Watch List in the 2017 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 achieve effective 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 took additional steps in 2017 to implement these amendments and increase staff and resources of "Section 3" of the Intellectual Property Commission. However, Els Limits de La Jonquera in Girona was added to the Notorious Markets List in 2017 for widespread sales of counterfeits and ineffective enforcement. The

United States will continue to carefully monitor developments and work closely with Spain to address these issues.

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 political awareness of the importance of IPR to Sweden.

SERVICES BARRIERS

Telecommunications

Electronic Communications Code

Telecommunications in the EU are currently regulated 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.

As part of the EU's DSM strategy, in September 2016, the Commission released a proposal for a common "European Electronic Communications Code" (Code) that would update and merge four existing telecommunications directives (Framework, Authorization, Access, and Universal Service) into a single measure that would include rules on network access, spectrum management, communication services, universal service, and institutional governance. The Commission asserts that the proposed Code will promote infrastructure competition, greater investment in high-speed broadband networks, and greater harmonization of spectrum management across the EU. U.S. suppliers welcomed the Commission's attempt to reduce market fragmentation, promote the development and introduction of innovative services, and harmonize spectrum management. Negotiation on the Code in the so-called "trilogue" mechanism (discussions involving the EU Commission, Council, and Parliament) is currently ongoing.

The proposed Code would extend European telecommunications regulations to "over the top" (OTT) Internet services, such as voice, messaging, and other communications applications. Most of the obligations in the Code would apply to "number-based" Internet services that enable communications with mobiles and landlines. These obligations would 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 proposed 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 given that 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 jurisdiction.

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 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 Internet-enabled communication and messaging services (*i.e.*, OTT services), thereby imposing additional costs on those suppliers.

The Commission originally aspired to have a new regulation in place by May 2018, when the GDPR is scheduled to take effect. While the Parliament adopted its final amendments and voted on a mandate for the trilogue on October 26, 2017, the Council is continuing technical discussions as many Member States have not yet formed their final position on the Commission's proposal. Consequently, it is unlikely that the Commission's self-imposed May 2018 deadline for replacing the 2002 e-Privacy Directive will be met.

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 GATS 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, and 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. Only a few Member States prohibit such differentiation (Denmark, Ireland, and Sweden), and two Member State NRAs are considering adopting such a prohibition (Romania and the United Kingdom). Several other Member States allow for different rates based on reciprocating rates in the other country (Austria, France, Luxemburg, the Netherlands), and one Member State NRA is considering such an approach (Spain). A number of suppliers in the remaining Member States, however, are currently 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, Hungary, 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.

United Kingdom: In 2017, the Office of Communications (Ofcom) published two consultations for comment: the Narrowband Market Review and the Mobile Call Termination Review. In both consultations, Ofcom proposes not to allow UK operators to apply differential termination charges for calls originating outside the EU/EEA, but instead to require them to apply the same termination rate to all calls regardless of the country of origin. The United States encourages the United Kingdom to adopt these proposals.

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 (M2M) and Internet-of-Things (IoT) services because it appears to impose additional requirements that will not apply to domestic providers of such services. The United States will monitor the implementation of this new regulation.

Television Broadcasting and Audiovisual Services

Audiovisual Media Services Directive

A legislative proposal amending the 2007 Audiovisual Media Services Directive (AVMSD) (COM/2016/0287 final) was issued by the Commission on May 25, 2016. This proposal aims to update the 2007 Directive to reflect developments in the audiovisual and video on-demand markets. The 2007 directive established minimum content quotas for broadcasting that must be enforced by all Member States. Member State requirements are permitted to exceed this minimum quota for EU content, and several have done so, as discussed below. The AVMSD 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 proposed updated AVMSD includes provisions that would impose on Internet-based video-on-demand providers, which already must promote European works under current rules, a minimum 20 percent threshold for European content in their catalogs and require that they give prominence to European content in their offerings. The proposal 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. On May 18, 2017, the Parliament’s Culture Committee, which took the lead on the proposal, voted to increase the quota of European content to 30 percent. Member States could also choose to go higher. In addition, the Parliament voted to extend the scope of the directive to video-sharing platforms that tag and organize content, which raised concerns among social media platforms. Trilogue discussions among the Commission, Parliament, and Council were still under way in early 2018, but the three institutions had not yet reached agreement on a number of important issues, such as financial requirements to promote EU works and potential measures applied to video-sharing platforms.

Satellite and Cable Directive

The 1993 Satellite and Cable Directive (SatCab) governs satellite broadcasting and cable retransmission. 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, and such rights may only be acquired by agreement.

In 2016, the Commission carried out a review (REFIT) of the 1993 directive, 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 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), which as of March 2018 was still going through the decision-making process in the European Parliament and Council. The proposed Broadcasting Regulation seeks to extend the country-of-origin principle to online programming, a development strongly opposed by the U.S. film and commercial television sectors. 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 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 in relation to re-transmission, which is viewed by commercial producers 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 AVMSD in a restrictive manner. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of programming be of EU origin and 40 percent include French-language content. These requirements exceed AVMSD thresholds. 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 programming is 15 percent. A July 2016 regulation specifies that only if the top ten 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.

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. Ten percent of transmissions (and 20 percent for state broadcaster RAI) must be reserved for EU works produced within the past five years.

Poland: Television broadcasters must devote at least 33 percent of their broadcasting time each quarter for 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 5 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 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 European 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 2010, the Spanish government revised its audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of audiovisual licenses, and U.S. investors report that they have been negatively impacted. Following the 2010 amendment, several U.S. investors signed agreements with Spanish audiovisual license holders to provide content for free-to-air television channels.

These investments were disrupted by a 2012 decision by the Spanish Supreme Court, which annulled the nine digital terrestrial television (DTT) broadcasting licenses of these Spanish firms on the basis that the government had not followed the proper public tender process in allocating the licenses in 2010. In 2014, all of the annulled DTT channels ceased broadcasting, and in 2015 the Spanish government awarded six new licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. 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 engage in the practice of 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 European 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 field. The United States will continue to advocate for Member States to take into account experience of U.S. CPAs acquired in the United States.

Member State Measures

Czech Republic: The Czech Republic requires that at least a majority of the voting rights in an audit firm must be held by auditors licensed in the EU or by a firm licensed to perform statutory audits in a Member State.

Hungary: Foreign investors must have a Hungarian partner in order to establish accounting companies.

Slovakia: Slovakia requires that companies providing auditing services be registered in a Member State, and requires that at least a majority of the voting rights in an audit firm be held by auditors licensed in the EU or by a firm licensed to perform statutory audits in a Member State.

Retailing

Member State Measures

EU nationality is required for operation of a pharmacy in Austria, France, Germany, Greece, and Hungary.

Hungary: A 2015 law requires that food retail chains with annual revenue of \$55 million or greater shut down if they incur losses for two consecutive years. In 2016, the European Commission started infringement proceedings against Hungary, seeking the repeal of the law. While the EU forced Hungary to repeal a sanitation tax levied only on large, multinational supermarkets, Hungarian government officials have stated they will find new ways to make foreign retailers pay more tax.

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 defined the local supply chain and is intended to favor Romanian products. This law applies to high-volume supermarkets with more than €2 million (\$2.2 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 European Commission notified Romania of possible infringement proceedings on February 15, 2017. The 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. The United States will continue to monitor this process to ensure the agreement is implemented before the EU's modifications enter into effect.

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: Weak corporate governance remains a problem in Bulgaria. While legislative protection for minority shareholders has improved through insolvency rules in Bulgaria's Commercial Code and changes to its Law on Public Offering of Securities, enforcement of these statutory provisions remains inadequate. Inadequate judicial mechanisms for resolution of commercial disputes and a perception that foreign investors are unlikely to receive impartial treatment in Bulgaria's judicial system create further barriers to investment.

The natural gas market in Bulgaria remains largely closed to competition, with gas supplied almost entirely by Russia's Gazprom under a long-term contract and domestic distribution dominated by Bulgaria's state-owned company, Bulgargaz. These conditions have led to antitrust actions by the European Commission against both Gazprom and Bulgargaz's parent company, Bulgaria Energy Holding, which the Commission alleges is 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, a sharp increase of entry-exit tariffs by the Bulgarian energy regulator beginning on October 1, 2017, has made commercial gas trade 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 frequent, unexpected legislative changes. Investors reportedly find it difficult to make sound, long-term business plans due to the unpredictable legislative environment.

Although Croatian law calls for mandatory regulatory impact assessments of proposed legislation, that requirement is not strictly observed. In 2014, for example, less than 10 percent of the laws enacted were subject to proper regulatory impact assessments. The Croatian government has presented no clear commitment or timeline to increase meaningfully its conduct of such impact assessments.

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.

France: Pursuant to a December 2004 law that streamlined the French Monetary and Financial Code, the State Council designated a number of "sensitive" sectors in which prior approval is required before foreign acquisition of a controlling equity stake is permitted. In a December 2005 decree, the French government identified 11 business areas in which such approval would be required, and in which the Ministry of Economy and Finance must authorize in advance investment activity related to foreign ownership. In May 2014, the government expanded these areas to include energy, water, health, transportation, and telecommunications, as well as any installation, facility, or structure deemed to be "vital" under the Defense

Code. In addition to being able to restrict foreign ownership through the prior approval process, France also takes ownership stakes in companies in strategic sectors, which serves as a buffer against foreign takeovers.

Greece: All purchases of land in border areas and on certain islands require approval from the Ministry of Defense. The definition of “border areas” is broader for non-EU purchasers of land than for purchasers from within the EU, and obtaining approval for such purchases is more burdensome. 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.

Hungary: Investors have expressed concern that Hungary passes tax laws and regulations that disproportionately impact foreign-owned firms, often with limited consultation with affected businesses and stakeholders, and that tax larger (primarily foreign-owned) firms at a far higher rate. In 2016, the Commission determined that Hungary’s advertising and tobacco taxes, as well as supermarket inspection fees, unfairly discriminate against large companies. While Hungary suspended the tobacco tax and food inspection fee, it maintains the advertising tax.

Transparency experts have expressed concern that confidential “strategic agreements” that the Hungarian government has signed with over 70 major companies are a hidden forum for lobbying and preferential treatment.

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.

Latvia: The judicial system in Latvia can present significant challenges to investors. Insolvency proceedings, for example, can 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. In a recent study, 76.8 percent of business owners said they believe insolvency proceedings in Latvia are not transparent and fair and 74.3 percent said they had encountered insolvency abuse. U.S. stakeholders have similarly voiced 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: Financial service institutions and retailers have expressed concerns about recent tax measures directed at companies operating in those sectors. With respect to the retail sector, Poland in July 2016 adopted a new tax on companies engaged in the retail sale of goods, one that would impose progressively higher rates of taxation based on the size of a company’s turnover. In June 2017, the European Commission ruled that the measure breached EU rules on state aid by unduly favoring certain companies over others, and Poland subsequently suspended implementation of the tax indefinitely. With respect to financial institutions, Poland in January 2016 imposed a new 0.44 percent tax on the assets of banks, consumer lending companies, and insurance companies. International ratings agencies expressed concern that the

tax, which was estimated to cost companies in the sector €1 billion (\$1.1 billion) in 2016, would reduce banks' ability to absorb shocks, hurt credit growth, and adversely affect Poland's economic growth. Similar concerns have also been raised with respect to proposals that would require banks holding mortgages denominated in Swiss Francs to convert these loans into local currency, or that would require these lenders to make mandatory contributions to a fund that would make payments to mortgage borrowers.

Romania: Uncertainty and a lack of predictability in legal, fiscal, and regulatory systems pose a continuing impediment to foreign investment in Romania. 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.

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 proactively 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.¹⁴ 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) is facing substantial barriers imposed by KNPP and by Bulgaria's nuclear regulator. In order to participate in a 2018 procurement of nuclear fuel, Bulgaria's nuclear regulator would have to grant KNPP a license to use the fuel from the U.S. vendor. However, the regulator has refused to define the requirements for licensing KNPP to use the new fuel type, and KNPP's Board of Supervisors has refused to sign a contract that KNPP's management has reached with U.S. vendor to conduct the safety analysis that KNPP expected that it would have to provide the regulator. In contrast, in 2016 a Russian state-owned company, and the incumbent supplier to KNPP, was permitted to load a new nuclear fuel type prior to completing comparable tests. Without a process in place to license KNPP to use the nuclear fuel from the U.S. vendor and with short time remaining before the launch of the tender for KNPP's post 2020 nuclear fuel contract, the U.S. supplier will be unable to compete in the 2018 procurement.

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 (ANAC) 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.

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. Defense companies indicate that the Ministry of Defense uses statutory exclusions bypassing tendering procedures in signing contracts.

¹⁴ Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, February 3, 2014. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf.

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.

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 and 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 (\$843.8 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 (\$204.5 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 new 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 governments of France and Germany each owning up to 11 percent of the shares, the government of Spain 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 accounted for more than half of worldwide deliveries of new large civil aircraft over the last few 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 EU 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.

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 (\$178.9 million) for Belgian industrial participation in the A380 program and in 2008, a budget of €150 million (\$220.6 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 European 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 (\$411.1 million). For the A400M program, the Belgian federal government in 2016 agreed on a €45 million (\$50 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 (\$1.9 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 2018 budget includes €170.6 million (\$191.7 million) in reimbursable advances for aeronautical/aviation products, up from €164 million (\$184.3 million) in the 2017 budget. French appropriations for new programs include €102.7 million (\$115.4 million) in support

of research and development in the civil aviation sector in 2018, up from €68.2 million (\$76.6 million) in 2017.

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 (\$110.3 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 (\$400 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 (\$1.5 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 last coalition agreement (2013), the German government pledged further support for the aeronautics program.

Spain: On October 23, 2015, Spain's government authorized the Ministry of Industry, Energy and Tourism to grant ALESTIS Aerospace aid amounting to €19 million (\$21.1 million) for its participation in the development program of the Airbus A350 XWB. Aid corresponds to the schedule for 2013, which was not paid initially because the company was bankrupt at that time. Measures taken in connection with ALESTIS ensure the successful outcome of its participation in the A350 XWB program, which is considered strategic for the aviation industry in Spain. In 2015, the industry had a turnover of €9.7 billion (\$10.8 billion) and directly employed approximately 54,400 people.

In the case of Airbus commercial programs, ALESTIS supplies parts and components for the A380, A330, A320, and A350 XWB aircraft, among others. Regarding Airbus military programs, ALESTIS supplies parts and components for the CN235/C295 and A400M. It is also a supplier for Embraer and Boeing. Headquartered in Seville, ALESTIS has seven production facilities (six in Spain and one in Brazil) and employs approximately 1,600 people.

CUSTOMS ADMINISTRATION

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 currently 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; 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 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 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.

BARRIERS TO DIGITAL TRADE

In May 2017, the European Commission issued a “Mid-Term Review” document, describing work to date on the Commission’s Digital Single Market (DSM) strategy, intended to eliminate barriers to digital trade within the EU. The Commission has tabled 24 legislative proposals for the DSM, but only six of those proposals 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. Current EU law restricts the transfer of the personal data of EU citizens outside of the territory of the EU, except to countries that the EU has determined provide adequate data protection under EU law or that have met other specific requirements, such as the use of standard contract clauses or binding corporate rules.

The United States remains concerned that the implementation and administration of current and proposed EU law (e.g., the General Data Protection Regulation, or 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 (see discussion of the EU-U.S. Privacy Shield below), there are many other countries, including Japan, Korea, and India, 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 2017, two legal challenges had been filed directly against the Privacy Shield in the EU's General Court (lower court). The use of standard contract clauses are also under judicial review in Ireland and expected to be referred to the CJEU.

Privacy Shield

On July 12, 2016, the United States and the EU concluded the EU-U.S. Privacy Shield Framework (the "Framework"), which 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. The Framework replaced the U.S.-EU Safe Harbor Framework of 2000, following an October 2015 CJEU ruling striking down the Commission decision that found Safe Harbor adequate under the EU's 1995 Data Protection Directive. As of January 2018, over 2,600 U.S. companies had completed their certification to the Privacy Shield.

The first annual review of the Privacy Shield was held in Washington, D.C., in September 2017. U.S. participants included officials from the Department of Commerce, the Federal Trade Commission, the State Department, and other federal agencies. The European Commission's Directorate General for Justice led the EU delegation, with active participation from a select group of Member State DPAs, representing the Article 29 Working Party (a committee of Member State regulators). The White House issued a statement reaffirming the Administration's support for the program, and the participants issued a joint statement expressing the shared interest in the success of the Framework and a commitment to continue collaboration. On October 18, 2017, the Commission released its report on the first annual review of the functioning of the Framework. The report concludes that the Framework continues to provide an adequate level of privacy protection under EU law and the necessary structures have been established to ensure the functioning of the Framework.

Proposed EU Regulation on the free flow of non-personal data

On September 13, 2017, the Commission released a proposal for a regulation on a framework for the free flow of non-personal data within the EU. The proposed regulation focuses on non-personal data, i.e., data that is outside the broad scope of the GDPR. The proposal would prohibit 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 strongly encourages 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 will take effect on May 25, 2018, replacing the 1995 Data Protection Directive (DPD). The Commission and Member State DPAs are expected to issue a number of implementing measures before

May 2018, including some addressing elements of the GDPR explicitly left to Member States to determine (e.g., age of consent). In addition, Member States must adopt legislation that repeals the national laws that implemented the DPD. The United State will be monitoring this work closely.

Under the GDPR, the Commission and Member State DPAs can impose fines of up to 4 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 also introduces 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). Under the DPD, only the controller was liable for data breaches. Many companies are concerned that joint liability would require them to monitor other companies' data protection practices, which would increase administrative costs and burdens. Such monitoring requirements could make controllers and processors transfer more personal data more frequently between them, thereby increasing potential vulnerabilities to unauthorized disclosure. The new regulation also 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"). Companies have continued to express concern over the "right to be forgotten" and its potential to infringe on free speech and to restrict access to information of legitimate public interest.

The GDPR will create a new European Data Protection Board. The Board will be tasked with minimizing disparities in implementation and enforcement between individual Member State DPAs, and it will be entrusted to resolve disputes between DPAs. The GDPR includes provisions intended to minimize the bureaucratic hurdles of dealing with DPAs in multiple Member States by allowing EU residents to file complaints with the DPA in their home country and to allow companies to deal only with the DPA in the Member State where the company has its primary establishment. While U.S. companies welcomed the goals of this initiative, some have expressed disappointment that the proposed mechanism may be too complex and cumbersome and may still leave too much room for DPAs to take divergent approaches in different Member States.

France. 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. The CNIL order was appealed to the State Council, France's highest administrative court, and in July 2017 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. 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 could set a worrisome precedent, empowering governments to apply their domestic law extraterritorially on the Internet, and would create significant market uncertainty for businesses worldwide.

Interactive Computer Services

Aggregation Services

Over the past several years, certain Member States have adopted copyright-related measures requiring remuneration or authorization for certain content associated with online news aggregation services. Specifically, the measures 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 described above, the European Commission proposed a new neighboring right for press publishers that is under discussion as part of the Directive on Copyright in the DSM (COM(2016) 593 final). The Commission recommends expanding 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 are intended to address publishers' and visual artists' challenges in adapting to the digital marketplace. 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. These measures and proposals warrant careful monitoring in light of the interests and concerns of these stakeholders.

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 compensation regime for the use of 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). Faced with this measure, at least one leading U.S. supplier suspended its news aggregation service in the Spanish market. A 2015 economic study conducted for the Spanish Association of Publishers of Periodical Publications (AEEP) predicted that the amendment would raise barriers to entry for Spanish publishers, would decrease innovative access online for users, and could cost publishers an estimated €10 million (\$11.1 million) per year, with a disproportionate impact on smaller publishers (although publishers have not yet had to pay).

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). It does not apply to “short extracts” of news publications. Implementation of the German law has reportedly been less disruptive than in the case of the Spanish measure, and 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 July 2016, France passed the Freedom of Creation Act, a set of measures designed to bolster suppliers of cultural products through subsidies and other governmental interventions. 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 represent” 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 of photographs and images in thumbnails with foreign search engines and social networks.

Other Issues

Geo-blocking

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 IP address, physical address, or nationality, or on the issuer of the customer's credit or debit card. The final regulation to bar unjustifiable "geo-blocking" will take effect on December 3, 2018. 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.

Creative industries are strongly opposed to what they see as another attack on territorial licensing, and this aspect of the proposal has been contested by some Member States. The Commission affirmed in an official statement that its first evaluation of the regulation "will take account of the increasing expectations of consumers especially of those that lack access to copyright protected services." The European Parliament's Internal Market Committee also included a provision to consider the inclusion of all audiovisual services three years after the law's entry into force.

Cross-Border Contract Rules

In December 2015, the European Commission tabled legislative proposals on contract rules on the supply of digital content (*e.g.*, streaming music) and on contract rules on the online sale of physical goods (*e.g.*, buying a camera online). The two proposed directives are still going through the legislative process. The European Parliament lead committees adopted the final Parliament amendments to the proposed text on supply of digital content, opening the way for trilogues with the Commission and the Council, once the latter finalizes its own amendments. The other proposal addressing contracts for the online and other distance sales of goods is still under debate by the relevant committees and working groups in Parliament and Council.

The proposals seek to address concerns over a perceived relative lack of legal remedies in certain cases, such as for "defective" digital content purchased online. Specific provisions include expanding the cases in which vendors may rely on their own national laws when selling to other EU markets and improving coordination and monitoring for infringement of consumer protection rules.

It is not yet known whether, and to what extent, greater regulatory harmonization would be beneficial for U.S. online providers selling in the EU. The Commission's proposal to create "harmonized EU rules for online purchases of digital content" should reduce burdens for all sellers, including U.S. providers. In particular, this should help smaller players to scale up in the EU, requiring fewer resources to manage legal differences between markets. It is not clear, however, what impact regulatory harmonization in the final directives will have on other aspects of cross-border electronic commerce, potentially burdening providers of digital content. These include possible new rules affecting contracts between such providers and users, remuneration for damage done by "defective" digital content, and data portability requirements.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was \$136 million in 2017, a 73.4 percent decrease (\$375 million) over 2016. U.S. goods exports to Ghana were \$886 million, up 6.5 percent (\$54 million) from the previous year. Corresponding U.S. imports from Ghana were \$750 million, up 133.5 percent. Ghana was the United States' 81st largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Ghana (stock) was \$2.9 billion in 2016.

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 GHC100 (about \$25) and GHC50 (about \$12.50) 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.

Labelling Requirements

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.

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.

IMPORT POLICIES

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 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 that the Ghanaian government elected to afford greater protection, such as poultry and rice.

Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.5 percent, more than five 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.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 15 percent value-added tax (VAT)-like tax on all refined petroleum products. In addition, Ghana imposes a 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries and charges 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, 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 replaces the Export Development and Agricultural Investment Fund levy of 0.5 percent. Ghana also applies a one percent processing fee on all duty-free imports. Effective through the end of 2019, Ghana in addition imposes a special import levy of two percent of the cost, insurance, and freight (CIF) value on all imports, except for machinery and equipment listed under chapters 84 and 85 of the Harmonized System and some petroleum products and fertilizers. Finally, in November 2017, Ghana's Parliament passed a new 0.2 percent levy on imports from outside African Union (AU) member states to fund 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 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.

The Ghanaian government requires certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since 2014, Ghana has banned the importation of tilapia in order to protect local fishermen, limited the quantity of import permits issued for poultry and poultry products, and imposed a domestic poultry purchase requirement as a condition for importation.

All communications equipment imports require a clearance letter from the National Communications Authority. Securing a clearance letter prior to importation can reduce delays at the port of entry.

Customs Procedures

Ghanaian port practices 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 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 also 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 has taken on the inspection and valuation role once occupied by five licensed destination inspection companies, who many believed were the source of the long clearance delays. However, the one percent fee associated with the inspections is still collected.

Ghana has ratified the WTO Trade Facilitation Agreement and identified Category A commitments.

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 rights (IPR) policy and strategy. Further, Ghana has taken action to enforce IPR, including periodically conducting raids on physical markets for pirated works and inspections of import shipments. Despite these efforts to strengthen its IPR regime, enforcement remains weak and unreasonable delays in infringement proceedings discourage IPR owners from filing new claims in local courts.

SERVICES BARRIERS

Telecommunications

For licenses for 800 MHz spectrum for mobile telecommunications services, Ghana restricts foreign participation to a joint venture or consortium that includes a minimum of 35 percent indigenous Ghanaian

ownership. Applicants that do not reach 35 percent Ghanaian ownership within 13 months from the effective date of the license risk severe penalties.

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 has 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.

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 Minerals and Mining Act (2006, Act 703) 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 Petroleum (Exploration and Production) Act (2016, Act 919) mandates local participation. All entities seeking petroleum exploration licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Company holds a minimum 10 percent stake. 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.

Insurance

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.

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. 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 must also 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 \$3.0 billion in 2017, a 55.5 percent increase (\$1.1 billion) over 2016. U.S. goods exports to Guatemala were \$7.0 billion, up 19.4 percent (\$1.1 billion) from the previous year. Corresponding U.S. imports from Guatemala were \$4.0 billion, up 2.0 percent. Guatemala was the United States' 35th largest goods export market in 2017.

U.S. exports of services to Guatemala were an estimated \$1.6 billion in 2016 (latest data available) and U.S. imports were \$997 million. Sales of services in Guatemala by majority U.S.-owned affiliates were \$796 million in 2015 (latest data available), while sales of services in the United States by majority Guatemala-owned firms were \$5 million.

U.S. foreign direct investment (FDI) in Guatemala (stock) was \$1.0 billion in 2016 (latest data available), a 6.3 percent decrease from 2015.

FREE 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, as well as 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.

SANITARY AND PHYTOSANITARY BARRIERS

Guatemala is implementing the 2011 Central American Technical Regulation on Sanitary and Phytosanitary (SPS) Measures and Procedures (Council of Ministers of Economic Integration of Central America - Resolution 271-2011), which requires the inspection by Guatemalan authorities of U.S. packing plants that are first time exporters of non-processed products that have high sanitary risks, as determined by the government of Guatemala. This import requirement was not notified to the WTO SPS Committee by any of the Central American countries, including Guatemala.

Guatemalan sanitary and phytosanitary import requirements change frequently, often without any prior WTO notification. Import permit requirements frequently change, resulting in an 80 percent initial rejection rate, requiring re-application, delays between five and 20 days, and associated demurrage costs. Guatemala also imposes burdensome certification requirements state-by-state for U.S. exports.

Although Guatemala published an official list of quarantine pests in November 2016, there is no science-based protocol for treating these pests. Unlike in the United States, Guatemala fumigates and then denies entry to containers with quarantine pests, regardless of whether another treatment is possible.

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, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

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 Measures

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 at: <http://portal.sat.gob.gt.sitio/>.

Guatemala's occasional denial of claims for preferential treatment for U.S. products under CAFTA-DR continues to be a source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration) is using reference prices, such as prices from imports in previous months, to adjust invoice price declarations. Throughout 2016 and 2017, Customs was using a reference price for certain chicken products that was more than twice as high as the market price. These imports were stopped at port for up to 25 days while Customs performed a revaluation investigation (despite valuation not posing an admissibility question). Many of the investigations are still pending a final finding and of those that were finalized, not one was ruled in favor of the importer.

Stakeholders report that Guatemalan customs authorities also occasionally challenge declared tariff classifications, including for products for which the tariff classifications should be straightforward, and attempt to reclassify the products so that they are subject to a higher tariff. These practices raise concerns that the customs administration might be denying CAFTA-DR preferential tariff treatment to qualifying U.S. exports, as a means of increasing revenue. The United States will continue to raise these concerns with Guatemala.

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, *inter alia*, to government procurement.

Reforms of Guatemala's Government Procurement Law in 2009 simplified bidding procedures, eliminated the fee previously charged to suppliers for bidding documents, and provided an additional opportunity for suppliers to raise objections to the bidding process. Furthermore, the Guatemalan Congress approved reforms to the Government Procurement Law in November 2015 that improved procurement transparency and efficiency by barring government contracts for financiers of political campaigns and parties, members of Congress, other elected officials, government workers, and their family members. The 2015 reforms expanded the scope of procurement oversight to include public trust funds and all institutions (including NGOs) expending public funds, and also eliminated some of the special-purpose mechanisms used to avoid competitive bidding 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.

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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2017 Special 301 Report. While Guatemala's National Police and Attorney General's Office significantly increased intellectual property (IP) prosecutions in 2016, 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 of significant concern, affecting the ability of legitimate businesses to use their trademarks, as administrative remedies are inadequate and relief through the courts is slow and expensive. Cable signal piracy and government use of unlicensed software are also serious problems that remain largely unaddressed. Additionally, the United States continues to urge Guatemala to provide greater clarity in the scope of protection for 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

Some U.S. companies operating in Guatemala have raised concerns that complex and unclear laws and regulations constitute 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. In addition, government institutions in Guatemala can be prone to third-party influence. U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a significant concern and a constraint to investment.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries have the effect of inhibiting current and potential investments from U.S. firms.

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was \$501 million in 2017, a 136.1 percent increase (\$289 million) over 2016. U.S. goods exports to Honduras were \$5.1 billion, up 5.2 percent (\$253 million) from the previous year. Corresponding U.S. imports from Honduras were \$4.6 billion, down 0.8 percent. Honduras was the United States' 41st largest goods export market in 2017.

U.S. exports of services to Honduras were an estimated \$1.2 billion in 2016 (latest data available) and U.S. imports were \$634 million. Sales of services in Honduras by majority U.S.-owned affiliates were \$534 million in 2015 (latest data available).

U.S. foreign direct investment (FDI) in Honduras (stock) was \$1.1 billion in 2016 (latest data available), a 0.6 percent decrease from 2015. U.S. direct investment in Honduras is led by manufacturing, nonbank holding companies, and information.

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, as well as 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.

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 is particularly burdensome for importers. Following a July 20, 2017 U.S. Government-supported regional conference, the government of Honduras shifted management of product registration from the Ministry of Health to the newly launched Sanitary Regulatory Agency (Agencia de Regulacion Sanitaria—ARSA). By the end of 2017, the agency had granted 9,000 of 13,000 pending sanitary registrations, nearly 70 percent of the backlog. The creation of ARSA and the increased efficiency of registrations required to commercialize products facilitates U.S. exports.

Sanitary and Phytosanitary Barriers

Honduras is implementing the 2011 Central American Technical Regulation on sanitary and phytosanitary (SPS) Measures and Procedures (COMIECO Resolution 271-2011), which requires the inspection by Honduran authorities of U.S. packing plants that are first time exporters of non-processed products that have high sanitary risks, as determined by the government of Honduras. This import requirement was not notified to the WTO by any of the Central American countries, including Honduras.

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 2020. Honduras will eliminate remaining tariffs 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 Measures

In July 2017, the Honduran government implemented a "voluntary" local purchase requirement for pork importers. The program requires each importer to purchase locally a quantity of Honduran live hogs that depends on how much pork the importer will import. The goal of the program is to ensure the purchase of all domestically-produced hogs.

Customs 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 March 2016, the government of Honduras restructured its customs and tax agency, the Executive Tax Authority (DEI), and significantly reduced its workforce. A new Tax Administration System (SAR) has replaced DEI and assumed DEI's role in verifying that claims of origin meet the requirements of the CAFTA-DR and other international agreements. The SAR has implemented a much stricter approach to customs compliance, which has initially resulted in increased fines against Honduran importers, whose paperwork may contain errors, in addition to delays in customs processing.

On November 21, 2016, the government of Honduras launched the Presidential Commission for Integral Reform of the Customs System (COPRISAO) in response to recurrent private sector complaints involving procedural delays for entry and release of goods at Honduran customs. Public and private sector representatives administer COPRISAO with the aim of simplifying import/export procedures and improving relevant efficiency aspects of Honduran customs services. To assist the Honduran government in building COPRISAO's technical capacity, the U.S. Embassy launched a Customs Task Force. U.S. assistance includes site visits to view U.S. port operations, trainings and workshops for customs personnel, and technology exhibitions with U.S. companies.

In July 2016, Honduras formally 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 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.

As a means to improve customs and trade facilitation within the Northern Triangle, the government of Honduras has formally signed a cooperation agreement with USAID to identify and alleviate trade bottlenecks along its border with El Salvador.

Guatemala and Honduras initiated a Customs Union on June 26, 2017, to foster and increase efficient cross-border trade. The two countries inaugurated 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.

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 a backlash from local and international nongovernmental organizations concerned about labor rights, land issues, and environmental protection. Then in August 2017 as part of his reelection campaign platform, President Hernandez proposed ZEDEs as a catalyst to economic development and reducing unemployment. On October 23, the government of Honduras announced plans to develop seven ZEDEs throughout Honduras. Planning for some ZEDEs is underway, including one in West Bay, Roatan, which seeks to resolve critical infrastructure problems and install more efficient services and regulations.

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. The program is part of the Millennium Challenge Corporation's Threshold program to support President Hernandez's efforts to create a more transparent, fair, and efficient procurement process. 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 deemed acceptable to multilateral financing entities such as the Inter-American Development Bank and the World Bank. In 2018, Honduras will implement an e-procurement system to improve efficiency and require online bidding.

Honduras is not a party to, nor an observer of, the WTO Agreement on Government Procurement.

EXPORT 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 such duty waiver measures for such time as it is an Annex VII 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).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The United States worked closely with the government of Honduras as it developed a Work Plan, finalized in early 2016, to improve the protection and enforcement of intellectual property in Honduras. Proper implementation of the Work Plan will help address the need for more effective administrative and criminal enforcement against intellectual property violations, including by combatting cable and satellite signal piracy and ensuring that the scope of geographical indication protections does not negatively impact U.S. stakeholders' prior rights and market access. Greater clarity is needed to improve procedures relating to customs enforcement, including developing a trademark recordation system, and relating to the scope of protection for geographical indications, among other issues.

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 involving U.S. nationals who are landowners in Honduras.

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. Despite these efforts, 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, real estate transactions (particularly land title transfers), and the regulatory system in general. The telecommunications, health, and energy sectors appear to be particularly problematic.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$32.5 billion in 2017, a 18.1 percent increase (\$5.0 billion) over 2016. U.S. goods exports to Hong Kong were \$40.0 billion, up 14.7 percent (\$5.1 billion) from the previous year. Corresponding U.S. imports from Hong Kong were \$7.6 billion, up 2.0 percent. Hong Kong was the United States' 9th largest goods export market in 2017.

U.S. exports of services to Hong Kong were an estimated \$11.7 billion in 2017 and U.S. imports were \$9.6 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$29.3 billion in 2015 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$5.7 billion.

U.S. foreign direct investment (FDI) in Hong Kong (stock) was \$65.6 billion in 2016 (latest data available), a 2.4 percent increase from 2015. U.S. direct investment in Hong Kong is led by wholesale trade, nonbank holding companies, and information.

OVERVIEW

Hong Kong is a special administrative region (SAR) of the People's Republic of China, and the Hong Kong Basic Law provides for a high degree of autonomy in all matters but defense and foreign affairs. For trade, customs and immigration purposes, Hong Kong is an independent administrative entity with its own trade laws and regulations and is a separate Member of both the WTO and APEC.

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, U.S. industry is concerned that the Infant Formula Marketing Code will become *de facto* "mandatory" if the Hong Kong Hospital Authority requires it as part of any tender.

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.

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, industry groups are making efforts to develop an Infringing Website List (IWL) to raise awareness of websites offering pirated content among advertisers. Devices enabling illegal streaming of digital content are also available in Hong Kong. While the Hong Kong Customs and Excise Department 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. Such transits are typically destined for both the local market and places outside of Hong Kong.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was \$22.9 billion in 2017, a 5.9 percent decrease (\$1.4 billion) over 2016. U.S. goods exports to India were \$25.7 billion, up 18.7 percent (\$4.0 billion) from the previous year. Corresponding U.S. imports from India were \$48.6 billion, up 5.6 percent. India was the United States' 15th largest goods export market in 2017.

U.S. exports of services to India were an estimated \$23.1 billion in 2017 and U.S. imports were \$28.7 billion. Sales of services in India by majority U.S.-owned affiliates were \$24.5 billion in 2015 (latest data available), while sales of services in the United States by majority India-owned firms were \$14.7 billion.

U.S. foreign direct investment (FDI) in India (stock) was \$32.9 billion in 2016 (latest data available), a 10.0 percent increase from 2015. U.S. direct investment in India is led by prof., scientific, and tech. services, manufacturing, and wholesale trade.

OVERVIEW

The primary bilateral forum for discussing trade issues with India is the United States - India Trade Policy Forum (TPF), held annually and co-chaired by U.S. Trade Representative Robert Lighthizer and Minister of Commerce and Industry Suresh Prabhu, with senior-level intersessional meetings in between ministerial-level ones. The most recent TPF was held in October 2017 in Washington, D.C.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In addition to discussing technical barriers to trade (TBT) matters with Indian officials under the TPF, the United States discusses TBT issues with India during Committee meetings at the World Trade Organization (WTO), as well as on the margins of those meetings.

Toys

On September 1, 2017, the Indian Ministry of Commerce and Industry announced a new measure, "Amendment in Policy Condition No. 2 to Chapter 95 of ITC (HS), 2017 – Schedule – 1 (Import Policy)." The new requirement, which went into effect immediately, requires all toy imports to be tested using a conformity assessment facility accredited by India's National Accreditation Board for Testing and Certification (NABL) to demonstrate compliance with newly updated Indian toy safety standards. The only such laboratories are located in India, and no laboratories were accredited at the time of implementation. Before the enactment of the measure, producers could test their products to the applicable ISO, ASTM, or EN toy safety standard at any laboratory accredited under the International Laboratory Accreditation Corporation (ILAC) system. U.S. manufacturers have reported significant increases in costs and delays. In some cases, certain products have been prevented from accessing the Indian market entirely due to a lack of testing capacity and approvals.

Compulsory Registration Order for Electronics and Information Technology Goods

In September 2012, India published the Electronics and Information Technology Goods Compulsory Registration Order (CRO), which requires electronic and information technology (IT) equipment to meet

Indian product safety standards by, among other things, being tested by a laboratory recognized by the Bureau of Indian Standards (BIS). Since the enactment of the original requirement, India continues to expand the list of products subject to the measure, which now covers 44 different types of electronic and information technology (IT) equipment. Most IT products receive certification under the International Electrotechnical Commission (IEC) System of Conformity Testing and Certification for Electrotechnical Equipment and Components (IECEE), making this secondary testing unnecessarily duplicative. In 2016, India permitted foreign laboratories to be recognized by BIS, but only if such labs were physically located in India.

In 2017, BIS also revoked previously approved CRO registrations on multiple IT products for what appear to be administrative or discretionary reasons rather than issues related to compliance with the safety standards. According to U.S. equipment producers, the unnecessary testing and registration requirements, as well as registration cancellations under the CRO, have caused significant disruption to supply chains and costly delays.

Telecommunications Equipment - Security Regulations

In 2009 and 2010, India promulgated a number of regulations negatively impacting trade in telecommunications equipment, including mandatory transfer of technology and source code as well as burdensome testing and certification requirements for telecommunications equipment. India removed most of these measures in response to international stakeholders' concerns, but is expected to implement regulations requiring the testing of all "security-sensitive" telecommunications equipment in India in April 2018. It is unclear whether India will have the domestic testing capacity to implement the testing criteria. U.S. officials continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition Arrangement. In 2017, the United States raised concerns related to India's telecommunications security testing requirements bilaterally under the TPF and in the WTO TBT Committee.

Food - Package Size and Labeling Requirements

The government of India mandated standard retail package sizes for 19 categories of foods and beverages effective November 1, 2012, via amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule to date has not been notified to the WTO, nor has there been any reference to a specific comment period for domestic stakeholders since 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 effectively prevents many U.S. origin products from entering India. Attempts to import U.S.-origin products in the affected categories 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.

Foods Derived from Biotechnology Crops

Biotechnology products must be approved by India's Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. India's biotechnology approval processes are slow, opaque, and subject to political influences. Despite signs of progress, the GEAC's steps in 2017 towards approving a public sector, domestically developed genetically engineered (GE) mustard plant variety for commercial cultivation was further delayed pending additional government review; the government has yet to take a decision on its approval. 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 Bt cotton is the only biotechnology crop approved for commercial cultivation in India. 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.

In the event that additional biotechnology products are approved for import in the future, the labeling requirements for packages containing "genetically modified" foods remain unclear. Lack of clarity regarding jurisdictional authority between the Food Safety and Standards Authority of India (FSSAI) and the GEAC could also have negative effects on U.S. crops and products derived from biotechnology entering the Indian market. Also, the Ministry of Agriculture and Farmers Welfare (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 December 2015 Cotton Seed Price Control Order, 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 Ministry of Agriculture imposes restrictions on imports of livestock genetics and establishes quality standards. Importation of animal genetics also requires a "no objection certificate" (NOC) from the state government, import permission from the Directorate General of Foreign Trade, and an import permit from the DAHDF. The entire procedure for obtaining permission to import generally takes more than four months. Similarly, certain sanitary requirements are also restrictive, including animal disease regulations and testing requirements for imports of animal genetics. Neither the burdensome progeny testing nor the NOC are required of domestic producers of animal genetics. The United States discussed these requirements in technical level meetings of animal health experts held in November 2016 and August 2017 with the DAHDF. India has recently accepted the United States proposed veterinary health certificates for exports of in vivo derived bovine embryos, live bovine semen, and live equines.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to require that dairy products be derived from animals which 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 has so far rejected that proposal, and the United States continues to press India to provide access to the Indian dairy market.

Alcoholic Beverage Standards

In 2015 and 2016, India notified three different standards that apply to alcoholic beverages to the WTO, including the Food Safety and Standards (Food Additives) Regulations; the Food Safety and Standards (Alcoholic Beverage Standard) Regulations and the Food Safety and Standards (Food Imports) Regulations. Since then, revisions of all three regulations have been either notified to the WTO or published in The Gazette of India. The U.S. Government and U.S. industry representatives have provided comments on each these measures. The United States still has a range of potential concerns, including potential India-specific labelling requirements, certain product definitions, production method specifications, compositional requirements and ingredient limits, alcohol by volume limits, serving size criteria that are inconsistent with standard international practice, a limited list of approved additives, and maximum residue levels for many

chemical contaminants for which standards do not exist in Codex Alimentarius. The Alcoholic Beverage Standard has been implemented and published in the Gazette, and the United States continues to take every opportunity to raise its concerns in order to improve the restrictive approach to the regulation of alcoholic beverages in India.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's sanitary and phytosanitary (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 into the Indian market of U.S. poultry, pork, and other agricultural products, including alfalfa hay, cherries, strawberries, and pet food. As part of the TPF, the United States and India met for a Plant Health bilateral meeting in July 2017 and an Animal Health bilateral meeting in August 2017.

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 cargo 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 is collaborating with India on developing more specific guidance and a timeline to transition its inspections protocols.

On April 1, 2016, the Indian Central Board of Excise and Customs (CBEC) 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 CBEC also introduced an Integrated Risk Management facility for partner government agencies, which is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring 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. However, market sources report that the risk based inspection system is not yet fully operational as software linking with SWIFT and mapping by CBEC is still in process. Customs 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 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, requiring approval. Despite the final Regulation being in place, the pathway to product approval remains non-transparent. Because the requirements and process for new product approvals remain uncertain, FSSAI

could effectively block market innovations, product launches, and affect U.S. trade by not approving products for unspecified reasons.

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. At the 2017 TPF, both sides agreed that technical discussions on the export of pork to India were at an advanced stage. In October 2017, the United States responded to India's request for more information, and India assured expedited examination of the information with the goal of finalizing an export certificate as soon as possible. The United States continues to work with the government of India to resolve the issue.

Poultry

Since 2007, India has banned imports of U.S. poultry, live swine, and related products due to the detection of low pathogenic and highly pathogenic avian influenza in the United States. The ban is applied on a countrywide basis, and thus does not take into account regional conditions including areas free of avian influenza in the United States. The United States repeatedly raised concerns about India's measures in the WTO SPS Committee, discussed them bilaterally with India, and in 2012, filed a dispute settlement case at the WTO. The panel found and the Appellate Body affirmed that India's avian influenza measures breach numerous provisions of the WTO SPS Agreement. On June 19, 2015, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports.

On July 17, 2015, India indicated it would bring its measures into compliance with the adverse findings. The United States and India agreed that India had until June 19, 2016, to comply with the DSB's recommendations and rulings. India did not take any action by that date, and on July 7, 2016, the United States requested the authorization of the DSB to suspend concessions because India had failed to comply with the recommendations and rulings of the DSB. On July 18, 2016, India objected to the level of suspension of concessions. At the DSB meeting on July 19, 2016, this matter – the appropriate level of concessions to be suspended – was referred to arbitration.

On March 2, 2017, India informed the DSB that it had taken all required measures to comply with the DSB's rulings and recommendations in this dispute and insisted the United States terminate the arbitration proceedings for the suspension of concessions. On April 6, 2017, India requested the establishment of a compliance panel. At its meeting on May 22, 2017, the DSB agreed to refer the matter raised by India to the original panel, if possible. The United States responded to India's claim of compliance before the WTO during the fall and winter of 2017. The United States and India presented arguments before the WTO panel in early December 2017.

On July 8, 2017, India announced that it had adopted a new measure for avian influenza. The United States has concerns with how this measure will operate, and has attempted technical engagement with India concerning this new measure, and subsequent amendments India made to it.

In November 2017, Indian officials visited the United States to discuss the health certificate for poultry and poultry products and conducted an audit visit. The United States continues to work with India to open market access for U.S. poultry products into India consistent with the WTO ruling. Until then, the United States considers the dispute unresolved.

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 imports of U.S. wheat and barley. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date. 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, because of the U.S. phase-out of MB due to its demonstrated negative impact on the environment. 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 December 29, 2017, India's Ministry of Agriculture confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, until June 30, 2018. While these extensions have avoided formal bans on trade, they are frequently last minute and create uncertainty for U.S. exporters.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to open India's market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products into India.

Tariffs and other Charges on Imports

In July 2017, India implemented the Good and Services Tax (GST) system in an effort to unify Indian states into a single market and improve the ease of doing business. The GST is designed to simplify the movement of goods within India, but it also applies to imports. Before the GST implementation, imports could be subject to an "additional duty," a "special additional duty," an education cess (tax), state level value added or sales taxes, the Central Sales Tax, and/or various other local taxes and charges. The new GST system subsumed a number of these charges, including the "additional duty" and the "special additional duty," that were previously levied on imports into the single GST. The tariff (or "basic customs duty") continues to be assessed on imports separately and has not been incorporated into the GST.

The GST is a two-part system: a State and Central GST that is levied simultaneously on every transaction of goods and services in India, and an "Integrated GST" that covers goods and services sold between all Indian states. Both the Integrated GST and the GST are applied to imported goods. Under the new system, goods and services are taxed under four basic rates – 5 percent, 12 percent, 18 percent and 28 percent. Some items, like vegetables and milk, have been exempted from the GST. The price of most goods and services increased in the immediate aftermath of the tax, and as expected, economic growth slowed for several months following GST implementation.

The GST does not apply to alcoholic beverages, and U.S. stakeholders have identified various state-level taxes and other charges on imported alcohol that appear to be higher than those imposed on domestic alcohol.

As part of its computerization and electronic services effort, in 2009, India initiated a web based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE (<http://icegate.gov.in>). It provides options for calculating duty rates, electronic filing of entry documents (import goods declarations) and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses. However, while India publishes applied tariffs and other customs duty rates applicable to imports, no single publicly available official publication includes all relevant and up to date information on tariffs, fees, and tax rates on imports. India adjusts applied tariffs in numerous ways that make it difficult to determine the current applied rate, including in the annual budget as well as

on an *ad hoc* basis through notifications in the Gazette of India. The notifications through the Gazette contain numerous exemptions that vary according to the product, user, or specific export promotion program, rendering India's customs system complex to administer and open to administrative discretion.

India's tariff regime is also characterized by pronounced disparities between bound rates (*i.e.*, the rates that under WTO rules generally cannot be exceeded) and the most favored nation (MFN) applied rates charged at the border. According to the latest WTO data, India's average bound tariff rate was 48.5 percent, while its simple MFN average applied tariff for 2016 was 13.4 percent. Many of India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.5 percent, and the highest tariffs range from 100 percent to 300 percent. Applied agricultural tariff rates are also high, and average 32.7 percent. On a trade-weighted basis, the average agricultural tariff is 38 percent. In addition, while India has bound all agricultural tariff lines in the WTO, over 25 percent of India's non-agricultural tariffs remain unbound (*i.e.*, there is no WTO ceiling on the rate).

The large gap between bound and applied tariff rates allows India to use tariff policy to make frequent adjustments to the level of protection provided to domestic producers, creating uncertainty for importers and exporters. Tariff adjustments are regularly made in the agricultural sector. For example, in November 2017, India issued a customs notification announcing an immediate 50 percent tariff increase on dried pea imports from an applied rate of zero. On December 21, 2017, India raised the tariff rate for lentil and chickpea imports from zero to 30 percent. Together, the uncertainty and potential for large jumps in India's agricultural applied tariff rates present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, citrus, almonds, pecans, walnuts, apples, grapes, canned peaches, chocolate, cookies, frozen French fries, and other prepared foods used in quick-service restaurants).

India maintains very high tariffs on a number of other goods, including flowers (60 percent), natural rubber (70 percent), automobiles and motorcycles (60 percent to 100 percent), raisins and coffee (100 percent), alcoholic beverages (150 percent), and textiles (some *ad valorem* equivalent rates exceed 300 percent). India also operates a number of complicated schemes for imports, including duty drawback, duty exemption, and duty remission. Eligibility to participate in these schemes is usually subject to a number of conditions. India also maintains very high tariffs, in some cases exceeding 20 percent, on drug formulations, including lifesaving drugs and finished medicines listed on the World Health Organization's list of essential medicines.

Despite its goal of moving toward Association of Southeast Asian Nations (ASEAN) tariff rates (approximately 5 percent on average), India has not systematically reduced tariffs and in recent years has generally been increasing tariff rates across sectors. India has raised tariffs on specified telecommunication equipment (from zero to 10 or 15 percent) and on other high-tech information and communication technology products (from zero to 10 and 20 percent). The tariff was raised from 7.5 percent to 10 percent on reverse osmosis membrane element for filters. Among agricultural goods, the import tariff was increased from 30 percent to 45 percent for roasted and/or salted cashew nuts. Tariffs on other products were increased in March 2016 as well, including on industrial solar water heaters (from 7.5 percent to 10 percent) and solar tempered glass/solar tempered (anti-reflective coated) glass for use in manufacture of solar cells/modules/panels (from zero to 5 percent).

India also increased its tariffs on medical devices in 2016 from 5 percent to 7.5 percent. The increased tariff applies to devices such as pacemakers, coronary stents and stent grafts, and surgical instruments, and also to parts of medical devices, such as medical grade polyvinyl chloride sheeting for the manufacture of sterile Continuous Ambulatory Peritoneal Dialysis bags for home dialysis. India's tariffs on finished medical devices also can be higher than on intermediate goods and parts, benefiting Indian manufacturers at the expense of importers and disadvantaging Indian patients. U.S. companies have raised significant concerns with these actions.

Import Licenses

India maintains various forms of nontariff regulation on three categories of products: banned or prohibited items (*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) which can be imported only by government trading monopolies and are subject to cabinet approval regarding import timing and quantity. These requirements are often not fully transparent as the timing and quantity restrictions are infrequently published in its Official Gazette or notified to WTO committees.

For purposes of entry requirements, India has distinguished between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of at least five years. The Indian government’s Foreign Trade Policy (FTP) 2015-2020, announced on April 1, 2015, categorizes remanufactured goods in a similar manner to secondhand products, without recognizing 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. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its life, while refurbished computer parts from domestic sources are not subject to this requirement. India requires import licenses for all remanufactured goods. U.S. stakeholders report that meeting this requirement, like other Indian import licensing requirements, has been onerous. Stakeholders report problems including: excessive details required in the license application; quantity limitations set on specific part numbers; and long delays between application and grant of the license.

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. No objection certificates (NOCs) are required before applying for import permits from the Ministry of Agriculture’s Central Insecticides Board and Registration Committee. In order to receive an NOC from the relevant Indian government ministries and departments and an import permit from the Ministry of Agriculture, traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use must identify end users of the product, which is often not possible in advance of a shipment. In addition, importers must obtain certificates from the Central Excise Authorities confirming the last three years of the company’s purchases of boric acid, separated out by the quantity imported and quantity procured locally in India, as well as data on the total output of the finished product that utilized the boric acid. 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. In August 2017, India announced quantitative restrictions on all pesticides and insecticides. While it later rescinded the restrictions, in part, because of its inability to deploy the relevant software, there is uncertainty as to the possible implementation of these restrictions in the future. The United States has urged India to eliminate its import licensing requirements on boric acid in meetings of the WTO Import Licensing Committee and at the 2017 TPF.

Customs Procedures

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 26 September 2017, India amended Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which modified what is

included when determining the assessable value of an imported good. Prior to this amendment, the cost of loading, unloading and handling charges, and the cost of transportation and insurance were included in the assessable value at the place of importation (the customs station where the goods are brought for clearance) at one percent of the sum of Free On board (FOB) value irrespective of the actual cost. With the 2017 amendments, the one percent inclusion has been eliminated and the actual cost is assessable. If the cost of transportation, loading, unloading and handling charges is not ascertainable, then it will be taken as 20 percent of the FOB value. In case of import of goods by air, this cost is restricted to 20 percent of the FOB value where actual cost is more. This modification will increase the assessable value of most imported goods and, as a result, raise the effective tariff rate.

Also of note is that previously, only the freight charges for movement of imported goods by sea from the port of entry to the Inland Container Depot or Container Freight Station were excluded from the computation of transaction value. With the 2017 amendment, the cost of insurance, transport, loading, and unloading and handling charges associated with transshipment of goods will be excluded when goods imported by sea or air are transshipped to another customs station in India.

India's customs officials generally require extensive documentation, inhibiting the free flow of trade and leading to frequent and lengthy processing delays. In large part, this is a consequence of India's complex tariff structure, including the provision of multiple exemptions, which vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through the automation of trade procedures, including through the ICEGATE (<http://icegate.gov.in>) portal and other initiatives. The government of India is increasing use of electronic forms and only three documents are now required for importers and exporters for 13 separate government agencies. This has reduced wait times from weeks to days. India has also integrated an "Indian Trade Portal" for one-stop import and export information. A Customs Clearance Facilitation Committee was established in April 2015, bringing together at major ports representatives from each of the regulatory agencies commonly involved in clearing shipments.

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 developed the road map for trade facilitation for India, which will facilitate domestic coordination and implementation of TFA provisions. The United States and India held a joint workshop covering best practices in trade facilitation in October 2016. The two-day trade facilitation workshop, which included strong attendance from Indian and U.S. private industry, provided a forum for stakeholders to exchange views and best practices on customs issues. The CBEC and the Office of the United States Trade Representative are working on another TFA Workshop in 2018.

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. There are a wide variety of contract formats used by the state owned Public Sector Undertakings, each with different qualification criteria, selection processes, and financial requirements.

In 2015, the government mandated that 20 percent of its public procurements be awarded to Indian based micro, small, and medium enterprises, and in 2017, the Indian cabinet approved a public procurement policy encouraging preferences for Indian 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. 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 and Promotion (DIPP) issued two notifications under the Public Procurement “Preferential Electronics Order” and “Cyber Notification,” which require local content for all state and central government procurements mandating preferences for domestically manufactured electronic goods (including medical devices) and cyber-security software products. This notification is the culmination of similar Indian policy proposals over the past year that have outlined discriminatory government procurement policies designed to stimulate domestic manufacturing of electronics and telecommunications equipment.

Moreover, India’s defense 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. In March 2016, the Indian Ministry of Defense announced a new Defense Procurement Procedure that increased the offset threshold 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.

India is not a signatory to the WTO Government Procurement Agreement, but is an observer.

EXPORT SUBSIDIES

The Indian government’s Foreign Trade Policy (FTP) 2015-2020 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 several of India’s existing export promotion programs into two main export incentive schemes: the Manufactured Goods Exports Incentive Scheme (MEIS) and the Service Exports Incentive Scheme (SEIS).

In December 2017, India released a mid-term review of its FTP and outlined a renewed focus on promoting Indian exports, while acknowledging the need to eliminate export subsidies in a manner consistent with its WTO commitments. Nevertheless, the FTP retains its programs to promote exports, including the MEIS and SEIS.

India maintains additional 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, which are tied to export performance.

In 2017, India graduated from Annex VII of the WTO’s Subsidies and Countervailing Measures Agreement. Consequently, it should now eliminate all of its export subsidies in all sectors of its economy without exception. Despite its graduation from Annex VII, India has not publicly articulated a timeline for elimination of any export subsidy programs.

India also maintains a large and complex series of programs that form the basis of India’s 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, between August 2012 and May 2014, the government authorized the exportation of 66.5 million tons of wheat from government-held stocks 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. The United States, along with

other interested WTO Member countries, has raised concerns in the WTO Committee on Agriculture regarding Indian exports at prices procured below the government acquisition cost.

Agriculture Programs

India provides a broad range of assistance to its agricultural sector, including market price support, credit subsidies, debt waiver, and subsidies for inputs, such as fertilizer, fuel, electricity, and seeds. 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. Producers of 25 agricultural products benefit from the government program to sell to the government at minimum support prices. Rice and wheat account for the largest share of products procured by the government and distributed through India's public distribution system. Cotton is also a product that benefits in a significant way from the program. Purchases made through these operations at above market prices significantly increase the cost to the government and may have the effect of providing a subsidy to those products, as well as distorting market prices and planting decisions. Moreover, in certain years, some of the subsidized crops procured under market prices support programs may have been exported through private sector merchants and traders. Such high guaranteed minimum support prices and extensive government procurement can distort domestic market prices and incentivize over production, which restricts demand for imports and distorts international markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2017 Special 301 Report because of concerns regarding weak protection and enforcement of intellectual property rights (IPR), as well as its vocal encouragement and propagation of initiatives that promote the erosion of IPR around the world through multilateral and other forums. Through the High-level Working Group on Intellectual Property under the TPF, the United States and India held numerous and regular dialogues in 2017 on the range of IPR challenges facing U.S. companies in India with the intention of creating stronger IPR protection and enforcement in India.

Among the notable developments over the past year, the Department of Industrial Policy and Promotion (DIPP) took steps to promote IPR awareness in schools and increase capacity building for police officers to combat counterfeiting and piracy. DIPP also continues to undertake important administrative work to reduce the time for processing patent and trademark applications. Additionally, DIPP took important steps to amend patent examination guidelines for computer-related inventions to help increase certainty for applicants.

In the field of copyright, procedural hurdles and effective enforcement remain a concern. The Cinematographic Bill has not been re-introduced since 2010 and online piracy and illegal camcording continue to proliferate. In April 2017, India announced that the Copyright Board would merge with the Intellectual Property Appellate Board (IPAB), and that both boards would have one Chair. However, the IPAB has been non-functional since 2015, and the continued lack of a functioning copyright board has so far created uncertainty regarding how royalties are to be collected and distributed. Finally, the expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns about the strength of copyright protection.

In the area of patents, a number of factors 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 to support patent holders' rights exist in India, concerns remain over revocations and other challenges to patents, particularly patents for pharmaceutical products. The United States also continues to monitor India's application of its compulsory licensing law. Furthermore, in 2013, the Indian Supreme Court stated that India's Patent Law creates a second tier of requirements for

patenting certain technologies, like pharmaceuticals, and this interpretation may have the effect of limiting the patentability of an array of potentially beneficial innovations.

India currently lacks an effective system for protecting against unfair commercial use, as well as unauthorized release 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 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. The National IPR Policy called for trade secrets to serve as an "important area of study for future policy development," and the United States and India held a positive workshop on trade secrets issues in October 2016. Following the workshop, both countries announced important new work under the TPF to advance bilateral efforts on trade secrets.

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

In March 2015, India's Parliament enacted the Insurance Laws (Amendment) Act, 2015, which lifted the statutory cap on foreign investment in Indian insurance companies from 26 percent to 49 percent, but subject to a new requirement that all insurance companies be Indian "controlled." Subsequent guidelines promulgated by the Insurance Regulatory and Development Authority of India (IRDAI) prescribed conditions for satisfying the Indian "control" requirement. These 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 continue to express concern that the requirements stipulated in the IRDAI guidelines create a rigid structure that ignores operational realities and makes additional foreign direct investment (FDI) in the sector unattractive. As the new guidelines apply to all companies operating in the insurance sector (whether or not they received injections of new foreign investment following lifting of the 26 percent equity cap), the net impact of India's reforms since 2015 for many investors has been to create more negative conditions for doing business in the insurance sector.

In January 2016, the IRDAI issued an amendment to regulations governing the operation of foreign providers of reinsurance services in India. The amendment requires that local Indian reinsurers be afforded a mandatory first order of preference (or right of first refusal) for reinsurance business in India, a requirement that severely restricts the business for which foreign reinsurers can compete, with resulting negative impacts to the supply and cost of reinsurance services in the Indian market. IRDAI committed to undertake a review of this measure one year after its imposition (*i.e.*, beginning in January 2017). IRDAI's Reinsurance Expert Committee issued its report in November 2017 and noted concerns regarding the mandatory first order of preference. We continue to encourage IRDAI to eliminate this requirement in order to facilitate market-based placement of reinsurance business.

Over the last two years, U.S. and other international investors have expressed concerns about other proposed measures by IRDAI, including with respect to mandatory listing of companies operating in the insurance sector and the remuneration of insurance agents and intermediaries. Although not brought forward into formal regulation, these proposals – some of which may remain under consideration – have contributed to perceptions of an unpredictable and adverse climate for foreign investment in the insurance sector.

Banking

Although India allows privately held banks to operate in the country, the banking system continues to be dominated by state owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. 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. Total foreign investment in an Indian private bank cannot exceed 74 percent.

Audiovisual Services

U.S. companies continue to face difficulties with India's "Downlink Policy." Under this policy, international content providers that transmit programming into India using satellite must establish a registered office in India or designate a local agent. U.S. companies have reported that this policy is overly burdensome. India also requires that foreign investors have a net worth of Rs. 50 million (approximately \$800,000) in order to be allowed to downlink one content channel. A foreign investor must have an additional Rs. 25 million (approximately \$400,000) of net worth for each additional channel that the investor is allowed to downlink.

The Telecommunications Regulatory Authority of India has introduced new regulations on content aggregation and distribution that eliminate 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. The new regulations are particularly difficult for small and international content providers because these companies must now interact with each of the 60,000 local cable operators, radio, and TV broadcasters that they seek to target.

There are also a number of limits on foreign investment in enterprises in the audiovisual and media sectors, including FM radio (49 percent); news broadcasting (49 percent); and newspapers dealing with news and current affairs (26 percent). Additionally, pending litigation related to audiovisual services, including the acquisition of content and telecasting rights and advertising revenue of foreign telecasting companies, is causing uncertainty for companies considering market entry.

Legal Services

At present, 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. Some industry and government actors in India are reviewing the merits of liberalization of the legal services market in India. In June 2016, BCI published draft rules that would liberalize the legal services sector in India. The rules proposed opening India's market to non-litigation services (*i.e.*, services in foreign and international law) and advisory, arbitration, and other services relating to domestic law. However, on September 29, 2016, the BCI rescinded the draft rules on liberalization.

Telecommunications Services and Equipment

Barriers to Entry

India eliminated a 74 percent cap on FDI in Indian wireless and fixed telecommunications providers in August 2013, though government approval is required for FDI above 49 percent. U.S. companies note that India's one-time licensing fee (approximately \$500,000 for a service-specific license, or \$2.7 million for an all India Universal License) for telecommunications providers serves as a barrier to market entry for smaller companies. The government of India continues to hold equity in multiple telecommunications firms, which raises concerns about the fairness of India's telecommunications policies. For example, valuable wireless spectrum was set aside for Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL), two state owned telecommunications service providers, 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

India requires that telecommunications service providers receive pre-approval of each of their network operations centers (NOCs) before those NOCs may remotely access networks in India. Many global telecommunications service providers routinely provide network services from numerous NOCs distributed globally, requiring providers to seek numerous approvals from the government of India. Service providers have encountered bureaucratic delays and other obstacles to receiving the required approvals, which hampers the ability of foreign telecommunications operators' to efficiently operate networks, and disincentivizes investment in telecommunications in India.

Satellite Services

Ministry of Information and Broadcasting (MIB) guidelines establish a preference for Indian satellites in the provision of Direct-to-Home (DTH) subscription television services. 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. Instead, DTH licensees must procure any 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 for purchase.

When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which then resells the capacity to the end user after adding additional costs. 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 and prevents DTH licensees from offering a fuller range of services from U.S. satellites. This issue is compounded by a lack of transparency regarding ISRO's plans for future transponder capacity, which creates uncertainty for DTH service providers looking to expand in India over time. 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. Together, these requirements make it economically unfeasible for many foreign satellite communications providers to offer services in India.

Distribution Services

Prior to January of 2018, India required government approval for investors seeking to own more than 49 percent of a retail enterprise engaged in selling a single brand of product. In January 2018, India allowed 100 percent FDI through the automatic route for single brand retail. Foreign investment is also contingent on, among other things, a requirement to source from Indian sources at least 30 percent of the value of products, preferably from small and medium sized enterprises. A temporary exception to this local sourcing requirement was previously possible for enterprises engaged in the retail of “state-of-art” or “cutting edge” technology and where local sourcing is “not possible,” but the revised policy requires that companies source 30 percent of their global operations from Indian sources.

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 these local sourcing requirements and other conditions on foreign investment have diminished the commercial case for expanding investment in India’s retail sector.

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. In September 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 will still be 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 foreign universities to be invited to set up campuses in India. The report made three suggestions to facilitate the entry of foreign education providers into India: (1) the 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

Data Localization

While it has not yet been implemented, 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 identity 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 2012 National Data Sharing and Accessibility Policy, issued by the Ministry of Science & Technology, requires that all data collected using public funds be stored within the borders of India. Data and server localization requirements are also imposed by different regulatory bodies and procurement contracts. For example, 2015 guidelines require that cloud computing service providers must store all data in India to qualify for government contracts. Such localization requirements reduce productivity, dampen domestic investment, and undermine the ability of information and communications technology companies to offer cutting-edge services.

In December 2017, the Ministry of Electronics and Information Technology (MEITY) issued a lengthy white paper requesting public comment and input on a "Data Protection Framework for India" that is intended to inform the discussion leading to the development of a data protection law. The United States welcomes India's effort to ensure effective data protection, while cautioning against restrictions on cross-border data flows or requirements to store data locally. Such rules are unnecessary and often counterproductive in protecting privacy, and have significant negative impacts on cross-border digital trade.

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 providers of ICT services and equipment seeking to use strong encryption. Most other countries allow the use of strong encryption standards to ensure the security of sensitive information exchanged via the Internet and other networks. India is currently working on a new draft encryption policy; MEITY has allowed public comments and stakeholder input during the policymaking process. It is unclear when the policy will be finalized.

Internet Services

Intermediary Liability

India's 2011 Information Technology Rules fail to provide a robust safe harbor framework to shield 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. Failure to act, even in the absence of a court order, can lead to liability for the intermediary. The absence of a safe harbor framework discourages investment to Internet services that depend on user generated content.

Taxation

India assesses a six percent withholding tax on foreign online advertising platforms on income generated in India, with the ostensible goal of "equalizing the playing field" between resident service providers and non-resident service providers. However, India does not provide credit for taxes paid in other countries for

the service provided in India. Further, this “equalization levy” will result in taxes on business income even when a foreign service provider does not have a permanent establishment in India or when underlying business 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, and raises the costs of cross-border digital trade.

Electronic commerce

India allows for 100 percent FDI in business-to-business (B2B) electronic commerce, but largely prohibits foreign investment in business-to-consumer (B2C) electronic commerce transactions. In practice, this has meant that foreign companies can only invest in “marketplaces” where they connect buyers and sellers; they cannot establish online enterprises that own inventory. The only exception allowing for B2C foreign investment in electronic commerce was published in November 2015 by the Ministry of Commerce and Industry, DIPP, Press Note No. 12 (2015 Series) and states that single brand retailers that meet certain conditions, including the operation of physical stores in India, may undertake retail trading through electronic commerce. This narrow exception limits the ability of the majority of potential B2C electronic commerce foreign investors to access the Indian market.

OTHER BARRIERS

Price Controls on Medical Devices

On February 13, 2017, India’s National Pharmaceutical Pricing Authority (NPPA) announced a price control order on all coronary stents for sale in India. The order set price categories that do not fully differentiate for advanced technologies within a product class, requiring newer technology stents be sold at the same prices as older technology products, resulting in some technologically advanced stents selling at a loss. Several U.S. companies have applied to withdraw their most technologically advanced products from the Indian market due to the policy, but those requests have been repeatedly rejected by Indian regulators. U.S. stakeholders claim they must continue to sell their products at a loss in the Indian market for up to 18 months. The United States has asked that India further differentiate the price controls for advanced products, allow the withdrawal of products, and not extend the policy to additional products. Despite these concerns, on August 16, 2017, NPPA issued an additional price control order on 15 different orthopedic knee implant systems.

Solar Cells and Modules

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 requirements 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. In November 2016, India provided formal notice that it would bring the challenged measures into WTO compliance within a “reasonable period of time.” On June 16, 2017, India and the United States informed the DSB that they had agreed that the reasonable period of time to implement the DSB’s recommendations and rulings would be 14 months. Accordingly, the reasonable period of time was set to expire on December 14, 2017.

On December 14, 2017, India informed the DSB that it had ceased imposing any measures found inconsistent with the DSB's findings and recommendations. On December 19, 2017, the United States requested the authorization of the DSB to suspend concessions pursuant to Article 22.2 of the DSU on the grounds that India had, in fact, failed to bring the challenged measures into WTO compliance. On January 3, 2018, India objected to the United States' request pursuant to Article 22.6 of the DSU. At the DSB meeting on January 12, 2017, the matter was referred to arbitration pursuant to Article 22.6 of the DSU. An arbitration panel has yet to be established.

On January 23, 2018, India requested the establishment of a WTO compliance panel, pursuant to Article 21.5 of the DSU, to determine whether India has brought the challenged measures into WTO compliance. The DSB has yet to take any action on India's request.

Other Issues

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 increased that export duty to 30 percent in January 2012. Since January 2014, it has levied a five percent *ad valorem* export duty on iron ore pellets. Since May 2015, it has levied a ten percent export duty on iron ore containing less than 58 percent of iron. In recent years, certain Indian states and stakeholders have increasingly pressed the central government to ban exports of iron ore. To improve availability of iron ore for the local steel producers, in March 2016, the government of India enhanced and unified the rate of export duty for all types of iron ore (other than pellets) at 20 percent; earlier a 15 percent export tax was applicable on lumps and 5 percent on fines. In February 2012, India changed the export duty on chromium ore from Rs. 3,000 per ton (approximately \$46) to 30 percent *ad valorem*, an increase at current chromium ore price levels. In March 2017, India imposed a 15-percent export duty to conserve domestic resources of aluminum ores, including laterite. India's export duties can impact international markets for raw materials used in steel production.

Lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO inhibit 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 May 2016 the Indian Supreme Court issued a judgement concerning the Telecom Regulatory Authority of India (TRAI) in which it recommended 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." The government of India has not yet acted upon this recommendation. U.S. stakeholders continue to report that new requirements are issued with inadequate public notice and comment periods, or consultation or notification at the WTO. This lack of transparency creates unpredictability in 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 \$13.3 billion in 2017, a 1.3 percent increase (\$170 million) over 2016. U.S. goods exports to Indonesia were \$6.9 billion, up 14.0 percent (\$844 million) from the previous year. Corresponding U.S. imports from Indonesia were \$20.2 billion, up 5.3 percent. Indonesia was the United States' 36th largest goods export market in 2017.

U.S. exports of services to Indonesia were an estimated \$2.4 billion in 2016 (latest data available) and U.S. imports were \$908 million. Sales of services in Indonesia by majority U.S.-owned affiliates were \$3.0 billion in 2015 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were \$114 million.

U.S. foreign direct investment (FDI) in Indonesia (stock) was \$14.6 billion in 2016 (latest data available), a 9.1 percent increase from 2015. U.S. direct investment in Indonesia is led by mining, nonbank holding companies, and manufacturing.

OVERVIEW

The increasing number and severity of Indonesian trade and investment barriers has significantly increased the uncertainties and risks facing U.S. and foreign companies doing business in Indonesia. In recent years, Indonesia has enacted numerous regulations on imports that have increased the burden for U.S. exporters. Import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions impede U.S. exports. In addition, the Indonesian government has adopted measures that impede imports as it pursues the objective of agricultural self-sufficiency. Beginning in late 2015, the Indonesian government introduced a series of economic reform packages designed to ease regulatory burdens, improve the business climate, and attract additional investment. However, the impact of these reforms has been limited so far because of their narrow scope and slow implementation.

TRADE AGREEMENTS

Indonesia has free trade agreements (FTAs) with Association of Southeast Asian Nations (ASEAN) and ASEAN plus one, and Japan. Indonesia recently completed FTA negotiations with Chile and is negotiating other FTAs, including one with Australia and one with the European Union.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Toys – Standards and Testing Requirements

Ministry of Industry (MOI) Regulation 24/2013 (as revised by MOI Regulation 55/2013) requires, as of April 2016, a mutual recognition agreement for the acceptance of test reports from laboratories outside Indonesia. The U.S. Government is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory in-country testing in Indonesia to obtain certification under Indonesian National Standards (SNI) for import.

U.S. stakeholders remain concerned about the frequency of testing under the regulation, which is required on a per-shipment basis for imports, but only every six months for domestic products. They also are concerned about burdensome documentation requirements, as well as specific technical requirements, such as for formaldehyde, which are not based on the latest International Organization for Standardization (ISO) standard. In addition, U.S. stakeholders have asked MOI to reduce the inspection frequency once an importer demonstrates a history of compliance, along the lines of the U.S. Consumer Product Safety Commission's post-market surveillance approach. Since the regulation came into effect, importers have reported that the import testing and registration process has increased from 15 days to an average of 80 to 90 days. The United States has pressed Indonesia to amend the regulation and will continue to raise concerns over this regulation bilaterally and in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Halal Certification

In September 2014, Indonesia passed Law 33/2014 governing halal products. The law 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 the halal law. The law also requires non-halal information to be placed on packaging for non-halal products. The law will go into effect on October 17, 2019, five years after its date of enactment. Initial conversations with Indonesian government officials indicated that there would be a two-phase implementation process, with food and beverage products required to comply with requirements within three years of the law going into effect (October 2022) and cosmetics, pharmaceuticals, and other products within five years (October 2024). In early 2018, however, Indonesian government officials indicated a change in policy whereby the law's requirements will go into effect immediately for all products on October 17, 2019. In the meantime, Indonesia has instructed companies to follow existing Indonesia Ulama Council (MUI) halal-certification procedures.

In October 2017, the Indonesian government officially established the Halal Product Assurance Agency under the Ministry of Religious Affairs (MORA). The Halal Product Assurance Agency has recruited leadership and hired staff, and is awaiting issuance of necessary implementing regulations. MORA is reportedly finalizing government regulations on halal product assurance and the fees to be charged for halal certification, with a goal of issuing them in 2018. The United States will continue to monitor developments and engage with Indonesia on these issues. (*See Import Policies Section for information on the pharmaceutical market access requirements in these regulations.*)

Separately, in July 2016, the Ministry of Agriculture (MOA) issued Regulation 34/2016, replacing Regulation 139/2014. As in previous regulations, all meat and poultry facilities wishing to export products to Indonesia must be fully dedicated for halal production. However, in practice this rule has only been applied to poultry. In addition, poultry slaughterhouses must be fully dedicated halal manual slaughter facilities in order for any facility to be eligible to export to Indonesia, and each of the poultry facilities must be approved by the MOA and Indonesia's religious authority for halal, MUI.

Prepackaged and Fast Foods – Labeling of Sugar, Salt, and Fat Requirements

In September 2015, the Indonesian government delayed implementation of Regulation 30/2013 on the inclusion of sugar, salt, and fat content information on labels for prepackaged and fast foods until 2019. The regulation would require inclusion of a health message affixed to labels for processed and fast foods. Indonesia failed to notify the regulation to the WTO TBT Committee until after it was finalized and in effect. The United States supports Indonesia's regulatory and public health effort to improve nutritional literacy and raise awareness among Indonesians about healthy lifestyle choices, but is concerned about the

lack of an open public consultation process regarding this measure. U.S. stakeholders have raised concerns regarding the need for further technical clarification and implementing guidance including acceptable methods for performing the required nutrient conformity tests, and whether tests performed by foreign laboratories or by companies' "in-house" laboratories would be acceptable. It is unclear whether Indonesia's testing procedure will allow *de minimis* variations between batches and could lead to unnecessary shipment-by-shipment inspections for label conformity. The United States submitted written comments on the regulation in 2014, a year after the regulation had gone into effect, and has raised the regulation at the WTO TBT Committee meetings, which led Indonesia to delay implementation. The regulation could affect as much as \$418 million in annual U.S. prepackaged food exports to Indonesia.

Label and Advertisement of Food Regulation

Indonesia's food and drug regulatory agency, the National Agency of Drug and Food Control (*Badan Pengawas Obat dan Makanan* – BPOM), issued a draft regulation in 2016, the "Government Regulation Concerning the Label and Advertisement of Food," to implement provisions of the Law 18 on Food of 2012. Among other things, the regulation would prohibit advertising or promotion of milk products for children up to two years of age, as well as any functional claims on foods for children under three years of age. The regulation also would severely restrict the infant formula industry's interactions with health care providers, and the draft contains additional restrictions, including a ban on advertising for alcohol and stringent requirements for nutrition labeling. It is unclear when Indonesia intends to finalize this regulation, and the Coordinating Ministry for Economic Affairs continues to coordinate inter-ministerial feedback. The United States has asked Indonesia to notify the measure to the WTO TBT Committee before finalizing the regulation.

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 late 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. (*See also section on Animal-Derived Products: 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 Indonesian 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 as it applies to 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.

Animal-Derived Products: Inspection Fees

In 2017, MOA began applying inspection fees on all animal product establishments seeking to export to Indonesia under Government Regulation 35/2016 on Types and Rates of Non-Tax State Revenue Applicable to the MOA. 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 the most recent 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 and renewed this recognition in January 2018 for another two years. (*See Customs Barriers section for more information.*)

IMPORT POLICIES

Tariffs

Indonesia’s average MFN applied tariff rate is 6.9 percent according to the WTO. Indonesia periodically changes its applied rates and over the last five years has increased its applied tariff rates for a range of goods that compete with locally-manufactured products, including electronic products, electrical and non-electrical milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products including milk products, animal and vegetable oils, fruit juices, coffee, and tea. Since December 2011, the average tariff rate for oilseeds have fluctuated between zero percent and five percent. As of November 2017, the tariff on soybeans is zero percent, but MOA is reportedly considering increasing this duty anywhere from 10 percent to 20 percent.

Indonesia’s simple average 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. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although the applied rate is 20 percent. The high bound tariff rates, combined with unexpected changes in applied rates, create uncertainty for foreign companies seeking to enter the Indonesian market. U.S. motorcycle exports remain severely restricted by the combined effect of a maximum of 50 percent tariff, a luxury tax of a maximum 125 percent, a 10 percent value-added tax, and the prohibition of motorcycle traffic on Indonesia’s highways.

Under Ministry of Finance (MOF) issued Regulation 182/2016, Indonesia levies an import duty of 7.5 percent on certain imported goods (known as “consignment goods”) shipped by business entities 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 and Luxury Taxes

Indonesia assesses an income tax on the payment of delivery of goods and activities related to import through MOF Regulation 175/2013. Importation of certain goods listed in this regulation is subject to a 7.5

percent income tax rate based on the import value. Unlisted goods imported by holders of an importer identification number (*Angka Pengenal Importir* or API) are subject to a 2.5 percent tax rate with the exception of soybeans, wheat, and wheat flour, while non-API importers are charged a 7.5 percent rate.

Luxury goods (defined as goods not considered necessities), imported or locally produced, may be subject to a luxury tax of up to 200 percent. Currently, 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, depending on the product. In March 2017, the MOF issued Regulation 35/2017, which revises Regulation 206/2015 defining the type of taxable goods classified as “luxuries” subject to the sales tax on luxury goods (STLG).

Pursuant to Government Regulation 22/2014, the current highest luxury tax rate applied is 125 percent for special luxury cars. However, under Regulation 41/2013, the STLG base rates were lowered for motor vehicles that meet certain environmental requirements. The STLG was reduced by up to 100 percent for motor vehicles with an internal combustion engine with a cylinder capacity up to 1,200 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel (about 47 miles per gallon), or a compression ignition engine (diesel or semi-diesel) with a cylinder capacity of up to 1,500 cc and a fuel consumption rate of at least 20 kilometers per liter of fuel. A luxury tax reduction of 50 percent is granted for motor vehicles using advanced technology diesel or petrol engines, biofuel engines, hybrid engines, or compressed natural gas (CNG) or liquefied gas for vehicles (LGV) dedicated engines, with fuel consumption of more than 28 kilometers per liter of fuel (about 65 miles per gallon) or other equivalent. A luxury tax reduction of 25 percent is granted for motor vehicles that use advanced technology diesel or petrol engines, dual petrol-gas engines (CNG kit converter or LGV), biofuel engines, hybrid engines, or CNG or LGV dedicated engines, with fuel consumption ranging from 20 kilometers per liter to 28 kilometers per liter of fuel.

Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise taxes on imported spirits than on domestic spirits. Excise tax rates are 150 percent on spirits and 90 percent on wine.

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede access to Indonesia’s market. Under Ministry of Trade (MOT) Regulation 70/2015 (which replaced MOT Regulation 27/2012), all importers must obtain an import license as either importers of goods for further distribution (API-U) or as importers for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. In response to stakeholder concerns about the implementation of these requirements, in December 2015, MOT issued Regulation 118/2015 on complementary goods, which allows companies that operate under an API-P import license to import finished products for market testing, after sales service purposes, or “completing a product line”, as long as the goods are new, consistent with the company’s business license, and meet import requirements.

In October 2015, MOT issued Regulation 87/2015 on the Import of Certain Products (replacing Decree 56/2009, which had been extended through MOT Regulation 83/2012). Like its predecessors, Regulation 87/2015 requires pre-shipment verification by designated companies (known in Indonesia as “surveyors”), at the importer’s expense, and limits the entry of imports to designated ports and airports. In addition, Regulation 87/2015 maintains non-automatic import licensing requirements on a broad range of products, including electronics, household appliances, textiles and footwear, toys, food and beverage products, and cosmetics. However, for holders of an API-U license, Regulation 87/2015 appears to eliminate the additional requirement to register as an importer of certain products.

MOT Regulation 82/2012 (as amended by Regulations 38/2013, 68/2015, and 41/2016) and MOI Regulation 108/2012, impose burdensome import licensing requirements for cell phones, handheld

computers, and tablets. Under Regulation 82/2012, importers of cell phones, handheld computers, and tablets are not permitted to sell directly to retailers or consumers, and they must use at least three distributors to qualify for a MOT importer license. MOT Regulation 41/2016 requires 4G-LTE device importers to have an API-P import license and provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms. In addition, 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. (*See below Wireless Devices Import Licensing section for related information.*)

Import of Used Capital Goods

In December 2015, MOT issued Regulation 127/2015 on Import Provisions for Used Capital Goods, replacing Regulation 75/2013. Regulation 127/2015 came into force on February 1, 2016 and will remain in effect until December 31, 2018. Under this regulation, capital goods of all types must appear on an approved list to be eligible for import and are subject to age restrictions ranging from limitations of 15 years to 30 years. Under Regulation 127/2015, used medical devices are no longer eligible for import. The regulation requires importers to apply for import approval from the MOT; the approval is effective for one year from issuance and can be extended once for a maximum of 60 days. The regulation also eliminates the provision in MOT Regulation 73/2013 that permitted non-capital goods not on the approved-used goods list to be imported in certain amounts with a recommendation from the relevant authority. The approval process for import of used capital goods not included on the list remains unclear. The regulation has made it more difficult for U.S. companies to import spare parts and refurbished equipment, disrupting their ability to provide post-sales service, as well as hampering their customers' operations.

Import Licensing for Agricultural Products

Import licensing requirements also apply to certain horticultural products. In order to import horticultural products into Indonesia, MOA and MOT regulations require Indonesian importers to obtain: (1) an Import Recommendation of Horticultural Products (RIPH) from MOA; and (2) an Import Approval (SPI) from MOT. Beginning in 2018, import recommendations are issued on a biannual basis and are valid through the end of the calendar year. Importers can hold only one import recommendation at a time, as issuance of a subsequent permit invalidates the holder's previous permit. RIPHs specify, *inter alia*, the product name, Harmonized System code, country of origin, and entry point for all horticultural products the applicant wishes to import. After securing an RIPH, an importer must obtain an SPI from MOT before importing horticultural products. An SPI specifies the total quantity of a horticultural product (by tariff classification) that an importer may import during the period for which the SPI is valid.

Indonesia has updated its import rules on horticultural products several times in the past year. In 2017, MOT issued Regulation 30/2017 (as amended by MOT Regulation 43/2017 and MOT Regulation 95/2017), which amends the procedures for obtaining an SPI. Under MOT Regulation 30/2017, SPIs still are required and quantities are allocated subject to the importer's cold storage capacity. MOT Regulation 30/2017 also retains a "realization requirement" that allows MOT to impose punitive measures (e.g., withholding the next period's import license) on importers that use less than the quota allotted under their import permits.

In 2017, MOA also issued two revisions (MOA Regulation 16/2017 and MOA Regulation 38/2017) that amend the procedures for obtaining an RIPH. Neither these regulations nor the MOT regulations have been notified to the WTO TBT Committee. The revisions require exporters to provide production capacity information reports and packing house registration numbers to the importers for inclusion in the RIPH requests. MOA Regulation 38/2017 also introduces a new provision, whereby state-owned enterprises (SOEs) can be designated as the sole importer of fresh horticultural products for consumption "in the event of supply and price stabilization." MOA Regulation 38/2017 also retains the requirement that all fresh

horticultural imports must have been harvested less than six months prior to importation, as well as a prohibition on imports of particular horticultural products during a set period of time before, during, and after local harvest. On November 30, 2017, MOA published a calendar showing the months during which certain fruit imports would be banned due to the local harvest. For the first time, apple imports will be banned August 2018 through September of 2018. There are also seasonal bans on oranges and lemons.

Indonesia changed its requirements for importation of beef in 2016. Under MOA Regulation 34/2016, all kinds of bovine meat cuts, including variety meats and offal, are allowed for import. Additional changes include the extension of import license validity to six months and the elimination of a rule requiring importers to use at least 80 percent of their allotted import licenses. Despite these changes, the import licensing procedures continue to hinder beef exports to Indonesia. For example, import licenses are issued for specific countries of origin, and importers cannot change sourcing to respond to evolving market conditions. Also, Indonesia only issues import licenses for meat originating in approved facilities. Approvals for new facilities require on-site inspection by MOA, but MOA lacks the resources to inspect all interested U.S. facilities. Indonesia also hinders trade through practices not covered by its written regulations. For example, certain importers have reported that the MOA would only approve approximately 10 percent of the quantity of beef offal that they have requested in their import licensing application. Finally, although Indonesia has stated that it will issue import licenses to any importer at any quantity, importers report that the MOA will refuse licenses to importers who request quantities above a certain threshold determined by the Indonesian government.

Similar to the prior import regulations, MOA Regulation 34/2016 also continues to restrict the import of poultry and poultry products. The regulations governing animals and animal products maintain a positive list of products that may be imported with a permit. The regulations provide for the import of whole, fresh or frozen poultry carcasses (chicken, turkey, or duck), but not for the import of poultry parts, effectively eliminating importation of poultry parts. Additionally, although the regulations provide for the import of whole-chicken carcasses, Indonesia in practice does not issue import permits covering these products. This practice also covers whole duck and turkey carcasses; Indonesia has not issued import permits for these products since December 2013.

MOT Regulation 27/2017 on Farmer Level Purchase and Consumer Level Selling Reference Prices sets reference prices to ensure availability and price stability for agricultural products. The regulation covers seven commodities: rice, corn, soybeans, sugar, shallots, chilies, and beef. MOT changed the retail reference price for rice twice in 2017, leading to confusion and market distortions. According to MOT Regulation 63/2016, the Indonesian government (through Indonesia's state-owned procurement body, the Bureau of Logistics (BULOG), and other SOEs) is required to carry out market operations in the event that market prices fall below buying reference prices or rise above selling reference prices. In its initial implementation of this Regulation 63/2016, MOA assigned PD. Pasar Jaya (a provincial government-owned company) to distribute sugar to consumers at a maximum price of IDR 12,500/kg (approximately \$0.88/kg). In 2017, the Indonesian government approved BULOG to import buffalo from India to sell at set prices in Jakarta's retail markets to dampen domestic prices, particularly during Ramadhan. Sales to modern retail outlets, as well as hotel, restaurant, and institutional buyers are not bound by government-set prices. Also in 2017, MOT issued Regulation 27/2017, which expands the scope of products subject to reference prices. Specifically, it removes reference prices for chili peppers, but introduces new reference prices for farm-raised chicken, chicken eggs, and cooking oil.

The licensing regimes for horticultural products and animals and animal products have significant trade-restrictive effects on imports, and the United States has repeatedly raised its concerns with Indonesia bilaterally and at the WTO. Because Indonesia failed to address these concerns, in January 2013, the United States requested consultations with Indonesia under the WTO's dispute settlement procedures. After the consultations failed to resolve the concerns, the United States requested establishment of a WTO dispute

settlement panel, and a panel was established in April 2013. In August 2013, New Zealand joined the dispute by filing its own request for consultations to address Indonesia's measures. At the same time, the United States filed a revised consultations request to address modifications to Indonesia's measures and to facilitate coordination with co-complainant New Zealand. A panel was established in May 2015, and the panel held meetings with the parties on February 1 to 2, 2016 and April 13 to 14, 2016. On December 22, 2016, the WTO issued the panel report, finding for the United States and 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 February 17, 2017, Indonesia appealed the ruling. On November 9, 2017 the WTO rejected Indonesia's appeal and upheld the panel's findings that each of the challenged measures is WTO-inconsistent. Indonesia must bring its measures into compliance in accordance with the WTO Dispute Settlement Body's findings and recommendations.

The United States is monitoring development of new import licensing requirements for other agriculture products, including soybeans and dairy, which were proposed in 2017. In October 2017, MOA announced a series of proposed measures to achieve self-sufficiency in soybean production by 2018. Potential policies under consideration include a duty on soybean imports (currently zero percent), requiring an import "recommendation" from MOA and import permit from MOT, completely banning imports during local harvest season, assigning monopoly import authority to BULOG, and mandating genetically engineered (GE) and GE free labelling/identification on bulk soybean shipments.

Dairy Nontariff Measures

In July 2017, MOA issued Regulation 26/2017, which requires local milk processors to procure local milk or invest in the local dairy sector. Businesses that only import are required to fund activities to "promote" the local dairy industry. Furthermore, all businesses in the dairy sector are required to have their own domestic dairy processing facilities by 2020. Failure to comply with these requirements will result in the inability to obtain import permits for dairy products. 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.

Pharmaceutical Market Access

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products. Ministry of Health (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 also contains a technology transfer requirement. A subsequent pair of regulations, 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 and applicable exceptions. In May 2016, Indonesia revised its negative investment list to raise 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 investments in the finished drugs industry are still capped at 85 percent. The United States also remains concerned by Indonesian government statements indicating that Indonesia failed to abide by domestic legal procedures in issuing a compulsory license decree in 2012 and is monitoring implementation of revisions made in 2016 to its Patent Law. The United States will continue to monitor the implementation of these regulations. (See *IPR Section* for related information on the Patent Law. See *Investment Section* for related information on the Negative Investment List.)

Despite a 2016 determination that BPOM would not follow through with a proposal to regulate certain nutritional supplements as “Foods for Special Medical Purposes,” industry representatives report that the agency has again indicated it would take steps to regulate the promotion, sale, and direct distribution to the customer of such products. Indonesia’s parliament passed a law in September 2014 requiring *halal* certification of pharmaceuticals as well as other products. The United States will continue to monitor the status of the implementing regulations for this bill, including the potential impact on market access for affected products. (*See TBT Section for related information on the Halal Law.*)

The innovative pharmaceutical industry also has raised concerns regarding the transparency of and 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 MOH have regular meetings with U.S. stakeholders to discuss these issues.

Market Access for Medical Devices

Foreign investment in the manufacture and distribution of medical devices is now capped at 33 percent and 49 percent, respectively, while previously they were not included in the negative investment list.

Medical devices sold by multinational companies in Indonesia face unclear or challenging market conditions on a number of fronts, including uncertain progress on whether (and if so, how) 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 above) could potentially also apply to medical devices; and challenges in obtaining product approvals for the e-catalog system used for public procurements. (*See Product Registration Section for more information.*)

In addition, Indonesia’s public procurement agency (LKPP) implemented price controls on coronary stents in July 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 will engage with Indonesia on these price controls and encourage the government not to extend this policy to other medical device categories.

Quantitative Restrictions on Imports

Indonesia imposes restrictions on feed corn imports, limiting the right to import to 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 2017, MOA did not allow BULOG to import any corn.

Indonesia bans salt imports during the 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 seeking to import these products must apply to be designated as registered importers authorized to import alcoholic

beverages, with an annual company-specific quota set by MOT. For spirits, MOT was supposed to issue import permits in April 2017, but delayed issuing any permits until September 2017.

Product Registration

BPOM has been working to improve the efficiency of its product e-registration system for low-risk products, although the MOH and the LKPP point to a lack of technical knowledge as a principal cause of the continued delay in registration of pharmaceuticals and sophisticated medical devices. Registration now takes between nine months to one year. Concerns remain, however, with proposed changes to the registration requirements and submission process that could further complicate product registration. U.S. stakeholders continue to express concern about the process to obtain product registration numbers (known as ML registration numbers). The United States will continue to monitor developments in this area.

Product Testing

BPOM sets out requirements for testing of heavy metals in food, drugs, and cosmetics in BPOM Regulation 17/2014. BPOM Regulation 12/2015 provides further guidance on this requirement, 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 targeted at limiting 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

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 Agreement on Customs Valuation. 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.

U.S. horticultural exports continue to have access to Tanjung Priok port, based on Indonesia's recognition of the U.S. food safety system for fresh foods of plant origin (FFPO). Australia, Canada, and New Zealand, have also received FFPO recognition and have access to Tanjung Priok. In January 2018, MOA renewed the U.S. FFPO status for two years. (*See also Sanitary and Phytosanitary Barriers Horticulture section.*)

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 importer identification number from MOA. Since mid-2014, Indonesia has refused to issue import recommendations to private traders for the import of japonica rice, although MOT regulations allow its import. However, according to Indonesian government sources, japonica rice falls under the same category as standard unbroken rice.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar and buffalo meat (carabeef). In 2017, BULOG began importing Indian buffalo meat. Additionally, BULOG is mandated to carry out local purchasing operations in order to maintain producer prices. As of early 2018, BULOG's local procurement activities were limited to rice.

EXPORT RESTRICTIONS AND TAXES

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, including January 2014 regulations that ban the export of over 200 types of mineral ore, including nickel and bauxite. U.S. stakeholders have expressed serious concern about the potential impact of these measures.

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 January 2017, Indonesia put in place a new set of requirements for the mining industry, as specified in Regulation 1/2017. Among other things, this regulation requires companies with existing contracts of work to convert to special mining business licenses and also requires the companies to build a smelter within five years. 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. If the cocoa and palm oil prices are below a certain threshold, these taxes do not apply. However, there is also 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.

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 Regulation 54/2010 and Presidential Regulation 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. Presidential Regulation 2/2009 stipulates that all state administrations should “optimize” the use of domestic goods and services and give price preferences for domestic goods and providers.

Indonesia's 2012 Defense Law mandates priority for local materials and components and requires defense agencies to use locally produced defense and security 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 incorporation of local content, offset production, technology transfer, or a combination thereof. The law also requires that there be no potential of an embargo as a result of the offset agreement. The amount of domestic value or 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. The 35 percent to 85 percent domestic value must then be

compensated by “counter-trade agreements,” incorporation of local content, or offset production. The implementing regulations for the 2012 Defense Law are contained in Presidential Decree 76/2014, but numerous details, including specifics for multiplier values, remain undetermined. Calculations for the value of local content can include design, engineering, intellectual property rights (IPR), raw materials, facilities/infrastructure costs, education and training, labor costs, and after-sales service.

Indonesia is not a signatory to the WTO Agreement on Government Procurement (GPA), but it is an observer of the GPA.

SUBSIDIES

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 raised concerns with this. 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 manpower. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. In 2013, Indonesia became subject to the WTO prohibition of export subsidies under Article 3.1(a) of the Subsidies Agreement when it graduated from the Annex VII(b) list of developing countries exempted from the prohibition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Indonesia remained on the Priority Watch List in the 2017 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 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 in physical markets, as noted in the 2018 Out-of-Cycle Review of Notorious Markets) remain key concerns. Counterfeiting activity extends to products that present serious risks to human health and safety, such as pharmaceutical products. Lack of enforcement also remains a problem, and the United States continues to urge Indonesia to increase 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; local manufacturing and use requirements; 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 will continue to work with the Indonesian government on IPR issues, including to develop a mutually-agreed intellectual property work plan to address deficiencies in IPR protection and enforcement, as well as measures to promote public education and outreach.

SERVICES BARRIERS

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 Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Express Delivery and Logistics Services

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. Under Government Regulation 15/2013 and Ministry of Communications and Information Technology (MCIT) Regulation 32/2014, only an Indonesian legal entity can apply for a license and foreign ownership of a company offering postal services may not exceed 49 percent. MCIT Regulation 9/2015, amending Regulation 32/2014, eased requirements and reduced processing time for local authorizations for postal service providers. Regulations 9/2015 and 32/2014 did not affect restrictions on foreign ownership or capital requirements.

Logistics services generally remain subject to a maximum 49 percent foreign ownership, notwithstanding May 2016 reforms to the Negative Investment List that increased foreign-ownership limits in freight forwarding, warehousing and storage services, and distribution to 67 percent. Investment in cold chain storage facilities was previously capped according to geographical location, but is now fully open for foreign investment.

In April 2016, Indonesia issued regulation 130/2016, amending Ministry of Transportation Regulation 74/2015 to reduce minimum capital requirements for foreign freight-forwarding companies from \$10 million to \$4 million.

Health Services

The 2016 revision of the Negative Investment List removed the outright ban on foreign ownership of certain healthcare facilities. Up to 67 percent foreign ownership is now permitted in general hospitals, private specialist clinics, dental clinics, and specialized nursing services in all regions of Indonesia, except Manado and Makassar. However, foreign ownership is still prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities.

Financial Services

No single entity, foreign or Indonesian, may own more than 40 percent of an Indonesian bank. The Financial Services Authority (*Otoritas Jasa Keuangan* - OJK) may grant exceptions in certain cases. Indonesia's financial authorities announced in November 2015 that a foreign investor may hold a majority stake in a bank if it acquires two banks and merges them. However, this change only applies for small banks that have capital of less than IDR 1 trillion (approximately \$73 million) prior to the merger. Separately, the Indonesian Parliament is debating a draft banking law that would lower the overall foreign-ownership cap on locally incorporated banks, which is currently set at 98 percent.

Under Regulation No. 15/49/DPKL, adopted in 2013, Indonesia restricts foreign ownership in private credit reporting firms to 49 percent.

In September 2014, the Indonesian Parliament passed the Insurance Law. The law requires all insurance companies to incorporate locally as Indonesian corporate entities (*Perseroan Terbatas* - PT). It also states that foreign investment in PT insurance companies is permitted only through the acquisition of publicly traded shares; private equity purchases of company stock are not allowed. Joint ventures predating the 2014 Insurance Law, where foreign ownership was acquired through private equity means, were grandfathered. The Insurance Law requires changes in equity capital affecting control of a company to be reported to the OJK. The Negative Investment List, which is separate from the 2014 Insurance Law, limits foreign ownership of an insurance company to 80 percent. Previously, OJK allowed foreign owners to inject capital if needed, subject to approval, which in some cases diluted the ownership percentage of the local partner. Indonesian regulators have indicated that companies currently with more than 80 percent foreign equity will not be required to divest existing foreign equity above that threshold, although new injections of capital will be required to adhere to a foreign equity cap of 80 percent. The Insurance Law does not contain an explicit cap on foreign equity ownership, but it called for the MOF to issue a regulation clarifying the threshold for foreign investment by April 2017. In July 2017, the Indonesian legislature approved the MOF's proposal of an 80 percent foreign equity cap as well as a grandfathering clause. However, the final regulation implementing this cap has not yet been signed or made public.

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.

OJK Regulation 14/2015 came into effect January 1, 2016, with certain transition periods. It requires, among other things, insurance companies operating in the Indonesian market to cede to domestic reinsurance companies 100 percent of the reinsurance for certain products (such as vehicle, accident, health, and life insurance, and minimum amounts on other lines of insurance). The previous cession requirement was 5 percent to 15 percent. The regulation also requires insurers writing other types of risks to cede a minimum amount of reinsurance to domestic reinsurers, unless exceptions apply, such as if a domestic reinsurer is unwilling to provide reinsurance. The United States has raised concerns over mandatory cession requirements for reinsurance and will continue to engage with Indonesia on this matter.

In November 2016, the central bank, Bank Indonesia (BI), issued Regulation 18/40/PBI/2016 on the implementation of payment transaction processing. The regulation governs all companies providing the following services: principal, issuer, acquirer, clearing, final settlement operator, and operator of funds transfer. The regulation caps foreign ownership of payment companies at 20 percent, though it is not retroactive. Current investments that exceed the cap are grandfathered, but some stakeholders have expressed concern that the regulation is inflexible and freezes their ownership structure.

In December 2016, the OJK released Regulation 77/POJK.01/2016 on peer-to-peer (P2P) lending companies. The regulation 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.

In July 2017, BI issued Regulation 19/08/2017 on National Payment Gateway (NPG), which promotes the adoption of electronic payments services through enhanced interoperability between bank networks. Under this regulation, all domestic retail debit and credit transactions will eventually be required to 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 cap on firms that wish to obtain a switching license to participate in the NPG preventing wholly owned foreign owned companies to provide switching services as well as prohibiting cross-border supply of electronic payment services for domestic retail debit and credit transactions. In September 2017, BI issued implementing Regulation 19/10/PADG/2017, which mandates that foreign firms wishing to process domestic retail credit and debit transactions through the NPG form partnership agreements with licensed NPG switches. BI must approve

such agreements, and the regulation makes approval contingent on the partner firm supporting development of the domestic industry, including technology transfer. The regulation caps the merchant discount rate for banks and payment switches and decrees that certain transactions must be executed free of charge.

On December 11, 2017, the MOT announced Regulation 82/2017, which 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. The regulation is scheduled to come into effect on April 26, 2018. Certain exporters and importers are granted a limited exception in the event that there is no or limited availability of Indonesian owned maritime transport or insurance companies. It remains unclear how the MOT will grant and administer these exceptions.

Maritime Cabotage

Indonesia's 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.

In response to concerns raised by the United States and other countries, the Ministry of Transportation issued Regulation 48/2011 allowing certain classes of non-transportation vessels to be eligible for a three-month renewable waiver from the domestic flagged vessel requirements when there is no suitable Indonesian flagged vessel available. The Ministry of Transportation issued Regulations 10/2014, 79/2014, 10/2015, 200/2015, and 100/2016 to provide further exemptions to Law 17/2010 and extended the renewable waiver period to one year for non-transport foreign vessels engaged in oil and gas surveying, drilling, offshore construction, dredging, salvage, and other underwater work. Under the regulations, treatment of other categories of specialty foreign vessels will be decided on a case-by-case basis for waivers of up to one year. In December 2017, the Ministry of Transportation issued regulation 115/2017, extending the cabotage exemption through the end of 2018.

Audit and Accounting Services

Foreign public accounting firms 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.

Film

Although Presidential Regulation 44/2016 revised the Negative Investment List to permit foreign investment in the film sector, film policy is under the purview of the Ministry of Education and Culture, which is drafting implementing regulations to the 2009 Film Law that could further restrict foreign participation in the sector. The 2009 Law on Film imposes a 60 percent local content requirement for local exhibitors and, to achieve that quota, it also provides authority to implement unspecified import restrictions, prohibitions against the dubbing of foreign films, and prohibitions against foreign companies distributing or exhibiting films. The law also restricts vertical integration across segments of the film industry. The local content requirement and integration restriction have not been fully implemented.

Previously, firms have raised concerns with a 2008 regulation requiring all local and imported movies, both theatrical prints and home videos, to be replicated locally, with penalties on exhibitors for failing to do so. However, because the Ministry of Education and Culture has assumed responsibility for film, the Ministry of Tourism regulation that imposed this requirement has been eliminated. Furthermore, industry representatives report that the reproduction of films has been digitized, and no longer relies on printing. U.S. industry requests that the government of Indonesia officially and permanently remove the replication regulation (then Ministry of Culture and Tourism Regulation 55/PW.204/MKP/2008) as it would nonetheless compromise U.S. rights holders' ability to trace the source of camcording piracy.

Construction, Architecture, and Engineering

Prior to November 2014, foreign construction firms were only allowed to be subcontractors or advisors to local firms in areas where the Indonesian government believed that local firms are unable to do the work. Government Regulation 10/2014 permits a local firm to serve as subcontractor or advisor to a foreign construction firm if the Indonesian government determines that a local firm is not capable of managing an entire project on its own. The foreign firm must work together with a 100 percent locally owned firm, or, if it is a joint venture, the local ownership should be at least 65 percent. In addition, the regulation requires that the construction project be worth at least IDR 100 billion (\$7.5 million) (or a minimum of IDR 20 billion, approximately \$1.5 million, for a consultation project), considered "high-tech" (Indonesia considers projects incorporating new technology that the local market cannot provide as meeting this criteria), and that the risk ratio (the risk of project failure) should be 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.

Presidential Regulation 54/2010 and Ministry of Public Works Regulation 31/2015 on Government Procurement of Goods and Services regulate construction project market segmentation, which establishes project classes for construction firms seeking government projects. Small projects are those less than IDR 2.5 billion (about \$175,000). Medium projects are between IDR 2.5 billion to IDR 50 billion in value (between \$175,000 and \$3.5 million). "Medium two" projects are IDR 50 billion to IDR 100 billion (between \$3.5 million and \$7 million). Large projects are above IDR 100 billion (approximately \$7.5 million) in value, and are the only category that may be awarded to foreign companies.

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 there are no Indonesian instructors capable of filling the position.

Indonesia currently regulates its educational system using Ministry of Education and Culture Regulation 31/2014, which requires international schools and National Plus School from kindergarten to high school to become a "Satuan Pendidik Kerjasama" (SPK – 'Education Unit Partnership'). Because the regulation requires all SPKs to be administered in partnership with a domestic institution or a Foreign Educational Institution already accredited or recognized in Indonesia, independent international schools are now prohibited and schools may not use the word "international" in their names. The number of foreign educators within a SPK is limited to 70 percent, and SPKs may use a combination of the national curriculum and their own curriculum.

Franchising and Retail Distribution

Since 2012, MOT has made three major regulatory changes in the franchising sector that threaten to have a significant chilling impact on future operations of foreign franchisors. In August 2012, Indonesia promulgated MOT Regulation 53/2012, which establishes 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.

In October 2012, MOT issued Regulation 68/2012 restricting the number of outlets that can be owned by a modern retail franchisee, such as supermarkets, to 150 before it must sub-franchise additional units to another local entity. In February 2013, MOT issued Regulation 7/2013 restricting the number of outlets that can be owned by a food and beverage franchisee to 250. In 2014, MOT issued amendments – Regulations 57/2014 and 58/2014 – to the existing franchising requirements. These revised regulations grandfathered franchisors or franchisees of restaurants, cafés, and bars that already had more than 250 outlets, but the existing requirements which limit the number of outlets a franchisee can own will still apply to new entrants to the Indonesian market or those that do not already have more than 250 outlets.

In December 2013, MOT issued Regulation 70/2013 requiring that 80 percent of the total amount of and types of goods that are sold by modern retail establishments, such as shopping centers, minimarkets, and hypermarkets, be domestic products. The regulation also limits the inventory of these establishments to a maximum of 15 percent private label products. In September 2014, MOT issued Regulation 56/2014, which came into effect in September 2016, 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. MOT Regulation 56/2014 also 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 and Equipment

Wireless Devices Import Licensing

Indonesia has issued a number of measures that make it more difficult to import cellular and Wi-Fi equipped products. In late 2012, Indonesia issued MOT Regulation 82, last amended by MOT Regulation 41/2016, which requires an importer of cellular devices, handheld computers, and tablets to become a “registered importer,” and then to seek “import approval” for different products. To become a registered importer under MOT 41/2016, companies must confirm that they are working with at least three distributors and obtain a recommendation from the MOI showing evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms. Companies seeking to become registered importers of 4G LTE devices may only apply under a so-called “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 4G-LTE devices in Indonesia. (*See Import Licensing Requirements for further discussion of API-P requirements.*)

MOT 41/2016 also requires companies applying for “import approval” to submit product identification numbers, an import certification from the MOI, and a certificate from MCIT. Because companies are unable to provide identification numbers months in advance, they often need to apply for this license on a per-shipment basis. However, MOT 41/2016 removed requirements for Indonesian-language labels, a one-year import plan, and the obligation to establish a local manufacturing facility within three years.

Importers of any type of cellular phones, handheld computers, and tablets 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 an importer 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

In 2015, MCIT issued Regulation 27/2015, which required 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. In July 2017, MOI issued regulation 29/2017, which set forth new formulas for the calculation of local content in 4G LTE devices. MOI 29/2017 broadens the scope of local content to include local manufacturing, development, and software applications (apps), and provides details on how investment commitments can satisfy the local content requirement. Under this option, 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 29/2017 also articulates a detailed monitoring system, whereby a company must agree to meet various MOI “supervision” targets that show their investments are successfully developing the domestic industry and undergo assessments three times a year. In July 2017, MCIT issued Circular Letter 518/2017 clarifying that the scope of the MCIT 27/2015 applies only to products under the HS codes for base stations, cellular telephone devices, tablet computers and 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 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.

Wireless Equipment Certification

The MCIT issued Regulation 5 in 2013, which imposes strict testing requirements on cellular and Wi-Fi equipped products, as well as on notebooks and personal computers. This measure requires that imported cell phones, tablets, handhelds, laptops, and other equipment with Bluetooth or wireless LAN features be tested at the device level rather than the more common modular level. In 2016, the MCIT released Ministerial Regulation 23/2016, which reformed the testing process for certain wireless devices. Under the new regulation, devices may be licensed for sale by MCIT on the basis of a “Declaration of Conformity” filed by the device importer or manufacturer stating that testing was carried out in a laboratory recognized international testing facility or one recognized by MCIT.

BARRIERS TO DIGITAL TRADE

Data Localization

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. Indonesian officials have indicated that “public service” means any activity that provides a service by a “public service provider,” consistent with the definition in the implementing regulations to the 2009 Public Service Law. This broad definition creates uncertainty for service suppliers

across sectors. GR 82/2012 provided a five-year implementation period for data localization requirements, which expired on October 12, 2017.

In January 2018, the Indonesian government shared a draft amendment to GR 82/2012 that would classify data into three categories: strategic, high-risk, and low-risk. The draft amendment offers vague definitions of these categories, defining strategic data as data potentially disruptive to the national economy, defense, security, governance, transportation and communication, and/or data that can contribute to humanitarian disaster. The proposed amendment would require that strategic data be stored in Indonesia and allows each ministry to set conditions under which high-risk data can be stored abroad. The proposed amendment would also require that each ministry apply for MCIT approval to designate its data as strategic, but allows ministries to self-designate high- or low-risk 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 are putting forward regulations for certain financial services sectors that require data centers and disaster recovery centers to be located in Indonesia. OJK's Regulation 69/POJK.05/2016 mandates all insurers and reinsurers in Indonesia to have established data centers and disaster recovery centers in Indonesia by October 2017. In addition, OJK's Regulation 38/2016 and BI's Regulation 9/2007 regulate implementation and application of risk management in the use of information technology by commercial banks. Indonesia may pursue national legislation and additional regulations on personal data protection in 2018, which could expand requirements for data localization. U.S. firms have expressed concern that a local data center requirement could prevent service suppliers from leveraging economies of scale from existing data centers and inhibit cross-border data flows. Furthermore, while some larger companies may be able to absorb data localization related costs to provide their products and services in Indonesia, such requirements could potentially impede access for small- and medium-sized businesses. It also remains unclear how the proposed amendment to GR 82/2012 would affect these regulations.

The United States continues to stress that data localization requirements are not necessary for regulators to have necessary access to data for supervisory purposes, nor are such requirements needed to secure private information. Rather, such requirements can undermine the security and integrity of data by causing 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. In August 2017, Indonesia issued Presidential Regulation 74/2017 formalizing the E-Commerce Roadmap. The roadmap 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. Presidential Regulation 74/2017 also calls for further rules that would require electronic commerce companies to register and obtain an identity number from the government of Indonesia. The regulation also establishes a ministerial "steering committee" led by the Coordinating Ministry for Economic Affairs to coordinate regulatory efforts.

In August 2017, MCIT released for public comment a new proposed regulation Concerning the Provision of Application Services and/or Content over the Internet. While the revised proposed regulation removes some troubling provisions seen in the prior March 2016 circular letter on the same subject, such as a requirement to establish a permanent business unit and use an Indonesian IP address, stakeholders remain concerned that the scope and effect of these proposed regulations are too broad and could destabilize the fundamental architecture of Internet-delivered services. Among these concerns is a definition of OTT (Over The Top) that potentially covers every service provided via the Internet, requirements for OTTs to establish

permanent representatives and open bank accounts in Indonesia, and a proposal to create a National OTT Services Policy Forum that would have the right to supervise OTT companies and recommend bandwidth restrictions to MCIT. These rules could also have significant tax consequences that conflict with internationally accepted principles. The United States requested that Indonesia delay issuing this regulation until these issues could be addressed.

Digital Products

Indonesia is reportedly moving forward with plans to impose duties on digital products such as digital music, e-books, and apps. The new tariffs may be imposed alongside the numerous other electronic commerce regulatory provisions mentioned above. Imposition of duties on digital products would likely raise 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 growing number of U.S. firms have expressed 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 April 2014 closed certain sectors to foreign investment, including distribution and warehousing, and various areas of oil, gas, and mining services. A further revision of the Negative Investment List in May 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.

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. In June 2017, the Indonesian government issued Government Regulation 27/2017 as a revision to Government Regulation 79/2010. Regulation 27/2017 provides more incentives for upstream oil and gas investment, although the effectiveness of this regulation will depend on the subsequent implementing regulations from the MOF and Ministry of Energy and Mineral Resources (MEMR). Furthermore, Article 79 of Presidential Regulation 35/2004, which regulates contractor activities in the upstream oil and gas sector, provides that contractors must "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 efficiently and profitably 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 new 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 have been placed 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. The Indonesian government has increased pressure on oil and gas companies to hold export earnings in Indonesian state owned banks, per BI Regulation 13/2011 (as amended by BI Regulation 14/2012). This regulation subjects such 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. Further, production sharing contracts in Indonesia (and the gross split contracts that will replace them) 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.

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. The United States will continue to press Indonesia on these issues.

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 Regulation 4/2017 and 5/2017, which require 60 percent local content in solar modules and 100 percent in services by 2019.

In July 2016, MEMR issued Regulation 19/2016 on Indonesia's state-owned company PLN's purchase of solar power-generated electricity. This regulation replaced the previous 17/2013, which was struck down by the Supreme Court. Regulation 19/2016 prioritizes the use of domestic goods and services and requires a minimum standard of local content for solar (photovoltaic) power plant development, in accordance with Indonesia's existing regulations under the MOI. In March 2017, MEMR issued Ministerial Regulation 12/2017 (later revised by Ministerial Regulation 50/2017), which set electricity tariffs for renewable energy based power generation sold to PLN. The regulation mandates using the national or local average power generation cost as a base tariff and resulted in generally lower tariffs for renewable energy power generation.

OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission continue to investigate and prosecute high-profile corruption cases, many stakeholders consider corruption 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.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was \$9.4 billion in 2017, a 4.4 percent increase (\$396 million) over 2016. U.S. goods exports to Israel were \$12.5 billion, down 4.9 percent (\$653 million) from the previous year. Corresponding U.S. imports from Israel were \$21.9 billion, down 1.2 percent. Israel was the United States' 24th largest goods export market in 2017.

U.S. exports of services to Israel were an estimated \$5.1 billion in 2016 (latest data available) and U.S. imports were \$6.6 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$4.2 billion in 2015 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$2.3 billion.

U.S. foreign direct investment (FDI) in Israel (stock) was \$9.7 billion in 2016 (latest data available), a 6.0 percent increase from 2015. U.S. direct investment in Israel is led by manufacturing, prof., scientific, and tech. services, and information.

FREE TRADE AGREEMENTS

The United States-Israel Free Trade Agreement

Under the United States-Israel Free Trade Agreement (FTA), signed 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 tariffs on non-agricultural goods traded between the United States and Israel have been eliminated 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. Negotiation and implementation of a successor ATAP was successfully completed 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 ten times, most recently through December 31, 2018, 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.

TECHNICAL BARRIERS TO TRADE

Israeli regulatory bodies, such as 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, which results in the exclusion of certain U.S. products from the Israeli market and adds costs to certain U.S. exports to Israel. A current example is Israel's new cosmetics regulation (known as the Pharmacists Ordinance), which does not align with International Standards Organization or U.S. technical regulations on issues including the roles of the Responsible Person; safety assessment for nanotechnology; and, use of confidential business information.

IMPORT POLICIES

Agriculture

U.S. agricultural exports that do not enter duty free under 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.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences for U.S. goods entering Israel under the FTA. In 2017, the United States and Israel agreed to adopt new procedures making it easier for exporters to gain approvals when claiming duty-free status under the FTA for individual products.

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: investment in local industry; co-development or co-production with local companies; subcontracting to local companies; or purchasing from Israeli industry. Israel is a party 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 its offsets on procurements covered by the agreement.

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), extended in 1997, 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.

The United States and Israel signed a new security assistance MOU in September 2016 to succeed the current MOU, which expires at the end of fiscal year 2018 (September 30, 2018). The new MOU has a total value of \$38 billion (\$3.8 billion per year) and will be in place from fiscal year 2019 through fiscal year 2028.

By joint decision, this new MOU will, beginning in 2019, slowly phase out over the next 10 years both off-shore procurement (the arrangement under the current security assistance MOU that permits Israel to spend 26.3 percent of its annual security assistance package within Israel on non-U.S. products) and Israel's use of security assistance funds to purchase fuel. Together, these changes mean that the amount of Israel's assistance package that can be spent only on U.S.-provided capabilities will, over the course of 10 years, increase to a level nearly \$1.2 billion above its fiscal year 2019 level.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Despite efforts by Israel to strengthen intellectual property rights (IPR) protection in 2017, the United States remains concerned with certain remaining deficiencies in Israel's protections for IPR. With respect to copyright protection, for example, Israel has yet to join the World Intellectual Property Organization (WIPO) Copyright Treaty or the WIPO Performances and Phonograms Treaty. A Knesset committee began deliberations in November 2017 and submitted draft modifications of its copyright enforcement law for comment. The bill is intended to establish indirect liability for copyright infringement. Israel also lacks adequate regulatory data protection for biologic pharmaceuticals as well as patent term restoration to compensate for marketing approval delays for pharmaceuticals.

BARRIERS TO DIGITAL TRADE

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. This is a significant disincentive to the establishment of electronic commerce businesses.

SERVICES BARRIERS

Audiovisual Services

Israeli law largely prohibits broadcast TV channels and radio stations, both public and private, from carrying advertisements. Only a select few private Israeli broadcast TV channels and a few private radio stations are allowed to do so. A few broadcast TV 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 permitted to carry advertising not directed at Israelis.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$68.8 billion in 2017, a 0.1 percent increase (\$38 million) over 2016. U.S. goods exports to Japan were \$67.7 billion, up 7.1 percent (\$4.5 billion) from the previous year. Corresponding U.S. imports from Japan were \$136.5 billion, up 3.4 percent. Japan was the United States' 4th largest goods export market in 2017.

U.S. exports of services to Japan were an estimated \$46.2 billion in 2017 and U.S. imports were \$32.6 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$68.8 billion in 2015 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$152.8 billion.

U.S. foreign direct investment (FDI) in Japan (stock) was \$114.6 billion in 2016 (latest data available), a 10.1 percent increase from 2015. U.S. direct investment in Japan is led by finance/insurance, manufacturing, and information.

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 barriers to entering and expanding the presence of U.S. products and services in the Japanese market.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Country of Origin Labeling Requirements for Ingredients

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 ingredient by weight in certain processed foods manufactured in Japan. 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. The transition period for compliance will end in March 2022. The expanded requirements do not apply to imported processed foodstuffs manufactured outside of Japan. However, the requirements have the potential to adversely affect U.S. exports of food ingredients because the domestic products may be produced with imported ingredients. In such cases, Japanese producers 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 companies may indicate an "intended" or historical source of ingredients when an ingredient is actually sourced from a different country.

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.

Lamb and Lamb Products

Following the December 2003 BSE detection, Japan also banned U.S. lamb and lamb products, despite BSE not occurring naturally in sheep. Japan has imposed BSE-related requirements on lamb meat, meat products, and casings that the OIE does not recommend, given that BSE does not naturally occur in sheep. These requirements have blocked access for U.S. lamb and lamb products for 14 years. The United States continues to urge Japan to open its market to U.S. lamb and lamb products.

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, including 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. Based on the Japanese government's assessment that the greatest hurdle to regulatory approval of food additives is the preparation of the application, in July 2014 it created the Food Additive Designation Consultation Center (FADCC) to assist applicants. The FADCC's services are free of charge, but 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. However, it affects U.S. producers in various ways.

Japan requires separate risk assessments for the pre-harvest and post-harvest uses of each fungicide. In 2016, Japan began to review pre- and post-harvest fungicide registrations through a single application process, which should lead to a more expedited review. 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 that they have been so treated and with a list of the chemicals used, which may dampen demand for the products. Japan also requires that each shipping carton within shipping containers be labeled with each chemical applied after harvest -- a requirement that is burdensome for shippers who use a rotation of fungicides. 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.

The United States remains concerned that Japan's procedures for enforcement of MRLs result in uncertainty even for shippers who have never violated Japan's standards. For example, after a single pesticide MRL violation on a particular product from a country, Japan imposes enhanced surveillance of all imports of that product 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 that exporting country, holding shipments until residue testing proves compliance. The United States continues to work with Japan and U.S. producers to address ongoing concerns.

Plant Health

Chipping Potatoes

In 2017, Japan lifted a ten-year ban on imports of chipping potatoes from Idaho and allowed USDA to approve areas for production of seed potatoes. Chipping potatoes from 16 U.S. states are now eligible for importation. However, shipments are permitted only during a six-month window (February to July), and they remain subject to a number of restrictions, including on overland transportation to chipping facilities away from ports. After previously approving overland transportation to one non-port chipping facility, in March 2015 Japan approved overland transportation to a second chipping facility. The United States will continue to engage with Japan to further improve access for U.S. chipping potatoes.

IMPORT POLICIES

Japan is the fourth-largest single-country market for U.S. agricultural products, with U.S. exports valued at over \$12.0 billion in 2017, despite the existence of substantial market access barriers.

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for imported rice limits the ability of U.S. exporters to meaningfully access 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)'s 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 \$195 million, totaling 302,581 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 would buy high-quality U.S. rice if it were more readily available. In December 2016, MAFF inserted a new clause in the SBS tender contract prohibiting importers and wholesalers from directly exchanging money. In September 2017, MAFF again revised the administrative rules for the SBS tendering system to prohibit the sale, transfer, or hand-over of SBS imported rice between importers and buyers. The revisions are believed to have been made to prevent SBS rice from being distributed at prices lower than the government's intended prices. The United States continues to monitor Japan's rice import system in light of its 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

Japan is the largest export market for U.S. pork and pork products on a value basis, with shipments valued at nearly \$1.6 billion (393,290 metric tons) in 2017, accounting for 26 percent of the value of total U.S. shipments to all destinations. 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 \$4.50/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 2017 Japan remained the largest export market for U.S. beef and beef products on a value basis. Shipments to Japan were valued at \$1.9 billion, totaling 303,762 metric tons. 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 import volumes of beef, both from all trading partners and from trading partners with which Japan does not have a free trade agreement, increase by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. Both conditions must be satisfied for the safeguard to trigger. 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.

Fish and Seafood

Total U.S. fish and seafood exports to Japan in 2017 were valued at \$860 million. However, tariffs on several fish and seafood products remain an impediment to U.S. exports and also pose an impediment 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, and Pacific herring, as well as on products such as 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 eliminate tariffs on, and remove nontariff obstacles to, U.S. exports of fish and seafood.

High Tariffs on Citrus, Dairy, Processed Food, and Other Agricultural Products

Japan maintains high tariffs that hinder U.S. exports of agricultural and other food products, including grains, sugar, citrus, wine, dairy, and a variety of processed foods. These high tariffs 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, 15 percent on almond flour, 10.5 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 15 percent to 57.7 percent on wine.

Wood Products and Building Materials

The United States remains concerned that Japan maintains numerous localization barriers at the national, prefectural, and municipal levels in the form of domestic content subsidy programs that may favor domestic wood products. The Plywood and Lumber Stepped-Up Production Fund was established as part of a 2015 MAFF supplemental budget, making approximately \$254 million available to support up to 50 percent of the expense of projects to enhance forestry production and logistics systems. The United States is monitoring the disbursement of these funds and other domestic content subsidy programs.

Leather/Footwear

Japan continues to apply a leather footwear tariff-rate quota (TRQ) that substantially limits imports into Japan's market, negatively impacting market access for U.S.-made and U.S.-branded footwear. Japan also applies a TRQ on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Customs Issues

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 \$87), 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.

SERVICES BARRIERS

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. 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 companies and private sector participants in Japan's banking, insurance, and express delivery markets.

Insurance

Japan's insurance market is the second largest in the world, after that of the United States, with a premium volume of \$471.3 billion in 2016 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and Japan Post 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 continues to urge the Japanese government to take steps to address a range of level playing field concerns in the insurance sector. These include differences in supervisory treatment between JP Group's financial institutions and private sector companies; ensuring fair and transparent access, based on commercial terms, to insurance product distribution opportunities within the Japan Post network (including the process of selection of financial products); and the potential for cross-subsidization among the JP businesses and related entities.

The United States continues to urge the Japanese government 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 March 2016, the Japanese government revised the 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 effective April 1, 2016. This was the first time in 25 years (since 1991) that the government increased the banking deposit cap for JP Bank, and the first increase in the insurance coverage cap for JP Insurance in 30 years (since 1986). 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.

Kyōsai

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.*, the Ministry of Agriculture, Forestry, and Fisheries (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

Japanese consumers increasingly turn to banks to meet their insurance needs. As a result, banks have become an important distribution channel for the sale of insurance products. In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. In July 2011, the Japanese government carried out a follow-up review of the bank sales channel, but there were concerns about the transparency and results of that review. 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.

Other Financial Services

Improvements have been made in Japan's financial services sector, particularly with the FSA's focus on dynamic (forward-looking) supervision. The United States continues to urge reforms in the areas of defined contribution pensions, sustainable lending practices, and sharing of customer information. The FSA continues to enhance its engagement and outreach with both domestic and foreign financial firms operating in Japan, and is expected to reorganize 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 enhancing the effectiveness of no-action letters and providing written interpretations of Japan's financial laws.

Telecommunications

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 six years and declined by 0.3 percent from 2016, it still holds a 68.3 percent share, 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, and the factors the Ministry of Internal Affairs and Communication (MIC) uses to determine how to evaluate applications have raised questions related to the fairness of the allocation process. Although the Japanese government has previously considered introducing legislation that allows for auctions as an option to assign commercial spectrum, it remains unclear whether such legislation will be introduced. The Cabinet recommendations in 2017 for improving the use and allocation of frequencies and MIC's Discussion Panel on Growth Strategy for Effective Use of Radio Frequencies and associated expert working group, charged with examining ways to more effectively use of spectrum, may provide a basis for moving towards a more market-oriented

system. Given anticipated spectrum needs for the launch of next-generation “5G” services, reforming Japan’s system for assigning and allocation spectrum should be a priority.

Handset Pricing

MIC’s January 2017 “Guideline for Improvement on Handset Subsidies for Smartphones” significantly limits mobile service provider 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 will have 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.

Information Technologies (IT)

Health IT

The United States has urged Japan to improve the quality and efficiency of health care by rapidly implementing health IT that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between United States and Japanese government health IT experts continues to address health IT issues of mutual interest.

Digital Trade

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.

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.

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.

In its Economic Revitalization Strategy first issued in June 2013, the government of Japan committed to promoting an educational system that more effectively provides the Japanese people with the skills to

compete in the global economy. Consistent with that commitment, in 2014 Japanese authorities actively engaged with American universities operating satellite campuses or extension facilities in Japan to seek a way forward on taxation and other issues. 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Japan generally provides strong intellectual property rights protection and enforcement. The United States continues to urge Japan to improve IPR protection and enforcement in specific areas, however, 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. Police and prosecutors generally lack *ex officio* authority to prosecute copyright-related IPR crimes on their own initiative, without a complaint from a rights holder. The United States also seeks improvements to Japan’s Internet service provider liability law to promote cooperation between rights holders and Internet service providers.

In addition, the United States continues to urge Japan to further 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 the trafficking in tools used to circumvent such technological protection measures. While the United States welcomed clarifications to Japan’s Copyright Law in 2010 that made clear that the statutory private use exception does not apply in cases where a downloaded musical work or motion picture is knowingly obtained from an infringing source, the United States continues to urge the Japanese government to expand this limitation on the private use exception to cover all works protected by copyright and related rights.

The “Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuff” (GI Act) entered into force on June 1, 2015. Fifty-nine geographical indications had been registered and 6 additional applications had been announced on MAFF’s website, as of March 22, 2018. The 59 geographical indications registered to that date all included the geographic place names plus the product names.

As part of the July 6, 2017, agreement in principle on the Japan-European Union Economic Partnership Agreement (EPA), Japan agreed to consider recognition of 210 terms as geographical indications from the European Union. These include 71 proposed terms for protection under the GI Act and 139 proposed terms for protection under the Act Concerning Liquor Business Associations and Measures for Securing Revenue from Liquor Tax. After publishing the list of proposed terms and a period of public consultation, in December 2017, MAFF announced the acceptance of the terms being considered under the GI Act pending entry into force of the Japan-EU EPA, although with certain limitations and important clarifications regarding the use of common names. The United States continues to monitor implementation of Japan’s GI system and 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.

The United States continues to work with Japan to address IPR issues through bilateral engagement.

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. The United States continues to monitor Japan's implementation of these agreements to ensure the greatest possible transparency in tendering processes and opportunity for participation by qualified bidders.

INVESTMENT BARRIERS

Japan continues to have the lowest inward FDI as a proportion of total output of any major OECD country. According to OECD statistics, the inward FDI stock at the end of 2016 (latest data available) was only 3.9 percent of GDP in Japan, compared to 37.3 percent on average for all OECD members. 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 confirmed this commitment in its 2017 growth strategy. The government is pursuing a range of policies intended to promote this target. Improving prospects for investment in Japan is particularly important given that Japan ranks as having the second-highest rate of return for financial and insurance services FDI among OECD countries (at 11 percent) and the third highest rate of return for FDI overall (at 10 percent), according to the latest OECD statistics.

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 interest of shareholders, cross-shareholdings, aspects of Japan's commercial law regime (*see Commercial Law section*), 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. 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 Japan Fair Trade Commission (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 make difficult good-faith efforts to comply with the AMA.

Improving Fairness and Transparency of JFTC Procedures

Japan amended the 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 an AMA amendment in 2013, which took effect in April 2015.

In connection with the amendments, Japan established a cabinet office advisory panel to study additional ways that the JFTC might change its procedures to enhance the transparency and fairness of enforcement proceedings. In December 2014, the advisory panel issued a report that examined JFTC investigation procedures regarding on-the-spot inspections, depositions, and attorney-client privilege. While the panel recommended that the JFTC clarify its procedures on issues related to on-the-spot inspections (for example, the ability of a firm to make copies of its seized documents), it did not recommend that the JFTC allow the presence of a defense attorney during depositions. On the issue of whether to recognize the right to assert attorney-client privilege (a privilege that is not recognized in Japan) in JFTC investigations, the panel proposed a limited recognition of the privilege to cover communications between leniency applicants and their counsel. The panel did not ultimately recommend recognition of a broader attorney-client privilege. The panel recommended that attorney-client privilege in JFTC investigations be considered alongside additional reforms in the future.

In December 2015, in response to the advisory panel recommendations and in an effort to promote the transparency of JFTC investigative procedures, the JFTC published new “Guidelines on Administrative Investigation Procedures under the Antimonopoly Act (Guidelines).” The Guidelines outline JFTC procedures for on-the-spot inspections, treatment of items seized during inspections, and JFTC procedures during depositions.

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 too often non-members are not uniformly 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 in some cases, 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 non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low.

Non-tariff barriers include certain issues relating to certification; 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, 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

Japan continues to be an important market for U.S. medical devices and pharmaceutical products. According to figures from the Ministry of Health, Labor and Welfare (MHLW), the Japanese market for medical devices and materials in 2015 was approximately \$22.7 billion. Imported U.S. medical devices held a 23 percent market share in 2015 and were valued at \$5.2 billion. (The U.S. market share of medical devices increases to 60 percent when local production in Japan by U.S. companies is included.) Japan's pharmaceutical market was valued at \$88 billion in 2015, with U.S. imports comprising 6 percent, or \$5.7 billion, of the overall market. 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 is included.

The government of Japan continues to call for increased promotion of Japan's pharmaceutical and medical device industries. Japan has recently made progress in several areas, including the reduction of approval periods for medical devices and pharmaceuticals. The health and safety regulatory environment in Japan is expected to improve further. In 2017, Japan introduced a "conditional early approval system" for medical devices and drugs that treat incurable or other serious diseases. For medical devices, the New Collaboration Plan to Accelerate Review of Medical Devices, implemented in April 2014, contains performance goals that, if met, will lead to speedier approvals by the end of the program in March 2019. The U.S. Government continues to urge Japan to improve performance goals for product reviews by meeting performance targets and ensuring that Quality Management System audits are completed within the standard review period. For pharmaceuticals, Japan has brought its approval periods in line with, or even faster than, U.S. and European norms. The U.S. Government continues to urge Japan to further harmonize efforts of its key regulatory agencies on international standards in clinical development, multiregional clinical trials, and risk management.

The United States has urged Japan to implement predictable and stable reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced medical devices and innovative pharmaceuticals. Reforms to Japan's reimbursement system in 2017 represent a retreat from previous progress made in this area. Current plans may weaken incentives previously offered under the Price Maintenance Premium (PMP), a mechanism designed to accelerate the introduction of innovative drugs to the Japanese market. They may also introduce significant uncertainty into pricing for patented pharmaceuticals, undermining investment planning for capital-intensive drug discovery research and clinical trials. U.S. stakeholders have expressed strong concerns regarding new rules that provide tiered access to the PMP based on certain criteria that might be easier for domestic firms to meet and that might limit the ability for SMEs to qualify for the full premium.

The U.S. Government continues to urge the Japanese government to implement predictable and stable reimbursement policies; 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.

Nutritional Supplements

In Japan, nutritional supplements are regulated as a part of 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.

Pursuant to the Abe government's Economic Revitalization Strategy issued in June 2013, Japan's Consumer Affairs Agency (CAA) started implementing a new Food with Functional Claim (FFC) system effective 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. 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 \$13.2 billion in total sales in 2016, making Japan one of the world's five largest national markets for these goods. The United States is consistently the second or third largest source of cosmetics imported into Japan, consisting of skincare, hair care, makeup preparations, fragrance, and toiletry goods such as pre-and after-shaving products, oral care, and bath preparations. In 2017, U.S. domestic exports were estimated at \$399 million. In past years, U.S. products represented 15 percent to 20 percent of the total import market.

However, 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 sunscreens and retinol (for anti-aging) 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, which would speed 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. Known as *besshi kikaku* or “Quasi Drug Additives Spec Codex,” this list is unofficial, however, and therefore is not consistently followed by the Ministry and local governments. Nor does it include protections for proprietary formulations.

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, which became a standard in May 2014. This provides 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, which similarly face delays. These reforms, if implemented, could help create a more open and competitive market. The United States will closely monitor developments.

Aerospace

The Ministry of Defense (MOD) prefers defense systems to be produced in Japan. However, Japan looks for imported solutions when domestic industry is unable meet performance, cost, or schedule requirements. MOD has shown a growing interest in interoperable foreign technologies that have 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. 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 broadening its civil space activity beyond purely scientific pursuits to include more commercial and strategic activities. Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems.

Japan is an important U.S. Open Skies partner in the Asia-Pacific region. Japan has three slot-controlled (level 3 coordinated) airports: Narita International Airport, Tokyo International Airport (Haneda), and Fukuoka Airport. Japanese carriers receive preferential treatment in the awarding and scheduling of international slot pairs, however. New access became available at Haneda airport in October 2016, enabling the four U.S. and two Japanese carriers already providing service to the United States from Haneda to expand existing operations. The United States continues to monitor this situation, as Haneda is expected to open additional slot pairs by 2020.

JORDAN

TRADE SUMMARY

The U.S. trade balance with Jordan shifted from a goods trade deficit of \$96 million in 2016 to a goods trade surplus of \$275 million in 2017. U.S. goods exports to Jordan were \$2.0 billion, up 34.5 percent (\$504 million) from the previous year. Corresponding U.S. imports from Jordan were \$1.7 billion, up 8.5 percent. Jordan was the United States' 61st largest goods export market in 2017.

U.S. exports of services to Jordan were an estimated \$698 million in 2016 (latest data available) and U.S. imports were \$594 million. Sales of services in Jordan by majority U.S.-owned affiliates were \$51 million in 2015 (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 \$213 million in 2016 (latest data available), a 6.6 percent decrease from 2015.

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 now imposes zero duties on nearly all U.S. products, with exceptions for alcoholic beverages and pornographic materials. Following consultations under the United States-Jordan Joint Committee, Jordan endorsed the United States-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services.

TECHNICAL BARRIERS TO TRADE

Jordan recognizes and accepts international standards and specifications utilized by U.S. producers. However, Jordan requires that certain imports meet additional product standards. In July 2014, for example, Jordan applied a new energy-saving labeling requirement for household appliances above and beyond that required by international standards. The United States and Jordan have agreed that appropriate U.S. labeling and testing will fulfill this requirement. Some measures with the potential to be viewed as barriers to trade are imposed periodically, such as a 2014 restriction imposed on packaging sizes for poultry available for retail resale.

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 to which can be unpredictable. In February 2017, Jordan imposed a 10 percent tax on carbonated drinks. U.S. beverage companies reported negative effects on their businesses.

Import Licenses

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, an issue the United States continues to engage Jordanian authorities to address.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade 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.

GOVERNMENT PROCUREMENT

Jordan is an observer of the WTO Agreement on Government Procurement (GPA). In 2002, it commenced the process of acceding to the GPA, with the submission of its initial entry offer. Subsequently, it has 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.

EXPORT SUBSIDIES AND TAXES

Net profits generated from most export revenue will remain fully exempt from income tax except for net profits from exports in the mining sector, exports governed by specific trade protocols, and foreign debt repayment schemes, which are subject to income tax. Under WTO rules, the tax exemption was initially set to expire on December 31, 2015, subject to an annual review. In November 2015, Jordan extended this tax exemption to December 2018. The United States worked with Jordan to develop a WTO-compliant alternative to this program. The Council of Ministers approved this alternative in July 2017, which Parliament will consider as part of the income tax law review expected in 2018.

In addition, 98 percent of foreign inputs used in the production of exports are exempt from customs duties; all additional import fees for inputs used in the production of exports are assessed on a reimbursable basis. Jordan imposes a \$50 per ton tax on exports of steel scrap, discouraging its exportation.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The Jordanian government continues to take steps to provide more comprehensive protection of intellectual property rights. As seen throughout the region, online and physical copyright infringement is widespread. Despite past efforts by law enforcement officials to crack down on unauthorized 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.

KAZAKHSTAN

TRADE SUMMARY

The U.S. trade balance with Kazakhstan shifted from a goods trade surplus of \$361 million in 2016 to a goods trade deficit of \$234 million in 2017. U.S. goods exports to Kazakhstan were \$551 million, down 50.4 percent (\$560 million) from the previous year. Corresponding U.S. imports from Kazakhstan were \$785 million, up 4.7 percent. Kazakhstan was the United States' 91st largest goods export market in 2017.

TRADE AGREEMENTS

The Eurasian Economic Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (CU) entered into force when the three countries adopted a common external tariff (CET), with the majority of the tariff rates established at the level that Russia applied at that time. Following Russia's WTO accession in 2012, the CU adopted Russia's WTO schedule of tariff bindings as applicable for all of the CU. On January 1, 2015, Kazakhstan, Belarus and Russia established the Eurasian Economic Union (EAEU) as the successor to the CU. Armenia joined the EAEU on January 2, 2015, and Kyrgyzstan joined on August 12, 2015. 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.

The Treaty on the Function of the Customs Union in the Framework of the Multilateral Trading System (May 19, 2011) established the EAEU, replaced the Customs Union, and reinforced the primacy of WTO rules in the EAEU legal framework. As a consequence of its membership in the EAEU, Kazakhstan's import tariff levels (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 the EAEU legal instruments. On these and other issues involving trade in goods, EAEU legal instruments establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. EAEU legal measures also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary (SPS) measures. 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.

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. The new rule will impede the trade of new models of automobiles and represents a technical barrier to trade that creates more favorable conditions for the EAEU automotive industry.

Sanitary and Phytosanitary Barriers

Systemic Issues

In addition to adopting the import requirements of the EAEU, Kazakhstan requires any importer or domestic producer of a wide variety of goods to obtain a Certificate of State Registration before the product can be sold in Kazakhstan. The Ministry of Health's Committee for Public Health Protection is responsible for issuing these certificates. Goods subject to this certification requirement include: biologically active supplements, including baby food and formula; equipment and devices for water supply systems; items of intimate hygiene; products for disinfection (except those used in veterinary services); and items designated for contact with food products (except dishes, table amenities, and microwave ovens). 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.

Agricultural Biotechnology

CU regulations covering agricultural biotechnology products have recently come into force, and Kazakhstan is enforcing them. These regulations 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.

IMPORT POLICIES

Kazakhstan has not duplicated Russian sanctions with respect to U.S. or European Union goods. However, the Russian sanctions regime has complicated the transit of goods from third countries to Kazakhstan through Russian territory.

Tariffs and Quotas

As a result of adopting the CU CET in 2010, Kazakhstan increased the tariff rate on more than 5,000 tariff lines. As part of its WTO accession, Kazakhstan agreed to gradually lower 3,512 tariff rates to an average of 6.1 percent by 2020. In January 2016, the country began applying lower-than-CET tariff rates to certain food products, automobiles, airplanes, railway wagons, lumber, alcoholic beverages, pharmaceuticals, freezers, and jewelry. Kazakhstan lowered additional tariff rates in 2016 and 2017, and a total of 2,475 tariff rates were below CET tariffs as of December 1, 2017. Kazakhstan introduced administrative measures to prevent the re-export of goods released at these lower tariff rates to Armenia, Belarus, Kyrgyzstan, or Russia.

In 2016, the average import tariff for Kazakhstan was estimated at 7.8 percent. Kazakhstan applies a zero rate on approximately 2,000 tariff lines, including livestock, pork, fish products, chemical and pharmaceutical products, cotton, textiles, machinery and equipment, medical vehicles and some types of airplanes (the CET exception on airplanes will be effective until 2023).

In 2016, Kazakhstan introduced a system of electronic invoicing for all payers of the value added tax (VAT) on imports. All importers and customs clearance dealers are expected to use the electronic invoicing system as of January 1, 2017.

In 2010, Kazakhstan established tariff-rate quotas (TRQs) on imports of poultry and beef to meet its obligations under the CU. 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 and established clear deadlines and delineation of authorities of government bodies in this process. The volume of TRQs is expected to remain unchanged, however. The government does not intend to introduce a TRQ on pork, and the tariff rate on pork is expected to be lowered from the current 30 percent to 25 percent in 2020.

According to amendments to the tax code signed by President Nazarbayev on November 30, 2016, all importers of alcohol products are required to present guarantees prior to shipment. These guarantees can be in cash, bank guarantees, or pledges of property. This requirement came into force in February 2017 and applied only to foreign alcohol producers, including both EAEU and third countries. U.S. exporters have expressed concern that this measure will create an unnecessary financial and administrative burden.

Licensing

In connection with its membership in the EAEU CU, Kazakhstan increased the number of goods subject to import or export licensing. Kazakhstan had required export licenses only for precious metals and stones, toxic agents, documents from national archives, and items of cultural value. However, the EEC removed precious metals, stones, jewelry, and toxic agents from the list of products subject to licensing in May 2015. Products with cryptographic capabilities, including certain commonplace consumer electronic products, are subject to import licensing procedures or a one-time notification requirement.

Customs Administration

Customs administration practices 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.

EXPORT POLICIES

Kazakhstan maintains a ban on the export of light distillates, kerosene, gasoline, lumber, and waste paper. The ban on light distillates might be lifted in 2019 if the government fulfils its plan to upgrade oil refinery facilities. A ban on the export of ferrous scrap imposed in 2013 expired on November 29, 2017, and has not been extended.

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 and maintain a physical presence) may participate in electronic tenders once they receive an electronic signature from the Ministry of Justice. The system's performance to date has been poor.

Kazakhstan intends to start negotiations to join the WTO Agreement on Government Procurement (GPA) in 2019. In October 2016, as part of commitments it made during its accession to the WTO, Kazakhstan became an observer of the WTO GPA. This observer status allows Kazakhstan to participate in meetings of the WTO Government Procurement Committee and to understand GPA requirements and procedures. Before 2019, 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 new 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.

Assets of the National Welfare Fund and the government-owned holding company, Samruk-Kazyna, account for about 40 percent of Kazakhstan's GDP. Through share ownership, Samruk-Kazyna manages some of Kazakhstan's largest national companies, including Kazakhstan TemirZholly (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. According to the new rules, however, only qualified suppliers are eligible to participate in Samruk-Kazyna tenders, and a designated Samruk-Kazyna subsidiary ranks 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. These new rules came into force in July 2017.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To comply with its WTO commitments and attract foreign investment, Kazakhstan has been working to modernize its intellectual property rights (IPR) laws. In November 2016, Parliament began considering amendments to Kazakhstan's IPR legislation that would streamline registration and enforcement of intellectual property. Although the United States acknowledges the efforts Kazakhstan has taken to strengthen enforcement of IPR, the lack of effective customs enforcement to prevent the importation of counterfeit and pirated goods remains a concern. Recently, pharmaceutical stakeholders have faced inconsistent application of Kazakhstan's existing IPR and commercial laws, raising concerns for that sector. Furthermore, effective protection continues to be hindered by the judiciary's lack of technical expertise, particular with regard to patent enforcement.

SERVICES BARRIERS

Telecommunications

Kazakh law restricts to 49 percent foreign ownership of telecommunications companies that provide long distance and international telecommunication services and those that operate fixed line communication networks (cable, optical fiber, and radio relay). As a result of negotiations regarding its WTO accession, Kazakhstan agreed that, by May 2018, it will remove this foreign ownership restriction, except for the country's main telecommunications operator, KazakhTeleCom.

Other

Under Kazakh law, foreign insurance companies may operate only through joint ventures with Kazakh companies, and foreign banks may operate only through joint ventures or subsidiary companies registered in Kazakhstan. However, Kazakhstan has agreed to eliminate the joint venture requirement and to permit foreign banks to directly open branch offices following a transition period of five years after its 2015 WTO accession (according to current rules foreign banks can operate in Kazakhstan only through subsidiary companies). 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, will no longer contain local content requirements for goods or requirements to support local producers. However, such requirements will still apply, until January 1, 2021, to subsoil use contracts signed before January 1, 2016. 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 Kazakh 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 January 1, 2017, amendments to Kazakhstan's Expatriate Workforce Quota and Work Permit Rules came into force. The amendments have in part created contradictory rules on intra-company personnel transfers, and decrease the initial term of work permits for foreign nationals from three years to one year; work permits will also be limited to one region of Kazakhstan.

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. 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.

KENYA

TRADE SUMMARY

The U.S. goods trade deficit with Kenya was \$119 million in 2017, a 23.8 percent decrease (\$37 million) over 2016. U.S. goods exports to Kenya were \$455 million, up 14.8 percent (\$59 million) from the previous year. Corresponding U.S. imports from Kenya were \$574 million, up 3.9 percent. Kenya was the United States' 97th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Kenya (stock) was \$369 million in 2016 (latest data available), a 13.9 percent increase from 2015.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Agricultural Biotechnology

Pursuant to a Kenyan Cabinet decision and Presidential order, on November 21, 2012, 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 agricultural biotechnology food and feed imports. Despite announcing in August 2015 that the Kenyan government would lift the import ban on genetically engineered products by October 2015, the government maintained the ban throughout 2017.

On December 1, 2016, the Agriculture Committee of Kenya's National Assembly recommended that the ban be upheld until new legislation on safety of agricultural biotechnology foods for human consumption is developed. The committee proposed that the Ministry of Health establish a Food Safety and Control Unit to evaluate biotechnology foods and to issue import permits, a role entrusted to The National Biosafety Authority (NBA) by law. Since the ban was imposed, key stakeholders in Kenya – scientists, universities, some non-governmental organizations, and policy makers, including influential governors and legislators – have launched educational and outreach programs to encourage the government to rescind the decision. Both food aid and commercial U.S. agricultural exports derived from agricultural biotechnology products have been kept out of the Kenyan market because of the ban. The restriction does not affect fully processed products such as edible oils; however, it does impact U.S. exports of semi-processed foods and feed ingredients, such as soy, maize and distiller dried grains.

In response to poor 2017 harvests following localized drought conditions, on June 21, 2017, the CEO of the NBA issued a statement on a "Revised Procedure for importing 99.1 percent Genetically Modified-Free Maize Grains," relaxing biotechnology import restrictions during the period of emergency importation from June 1 to July 31, 2017. For countries like the United States with commercialized biotech maize, the NBA was to sample and carry out conformity assessment tests at the cost to the applicant of KSH 30,000 (\$291), and if found to have greater than 0.9 percent biotechnology content, the maize would not be cleared for use as food or feed.

In September 2017, Kenya approved open field trials for biotech cotton (MON 15985) and derived varieties, and for biotech maize developed for drought tolerance under the Water Efficient Maize for Africa (WEMA) project. However, bottlenecks in the biosafety regulatory system may slow the dissemination and use of this technology.

The USDA Foreign Agricultural Service (FAS) continues to engage the government of Kenya and stakeholders to support the adoption of these technologies and address the challenges.

Sanitary and Phytosanitary Barriers

Meat and Meat 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, DVS has in practice provided other rationales for denying permits, such as the local availability of a certain product, although never formally providing 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 development of this disease. USDA continues to seek opportunities to engage the Cabinet Secretary for Agriculture and the Kenya Plant Health Inspectorate to resolve this issue.

Kenya subjects imported and domestically produced maize 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 and U.S. standard of 20 ppb. Further, most U.S. maize 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 maize, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. maize exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. maize exports largely uncompetitive compared with maize 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.

IMPORT POLICIES

Tariffs

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.

According to the WTO, in 2016 Kenya's average applied tariff rate for all imported products was 12.9 percent. Kenya generally applies the East African Community (EAC) Customs Union's Common External Tariff, which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent 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 maize and maize 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 2016, the EAC granted Kenya a one-year waiver to apply a rate of 10 percent instead of 35 percent on imported wheat. Kenya maintains a 16 percent value-added tax (VAT) and a 1.5 percent Railway Development Levy (RDL) imposed on all imports for domestic consumption. The government of Kenya sometimes waives tariffs when domestic agricultural prices exceed certain levels and there is a need to stabilize prices.

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 revised down the import duty rate on articles of used clothing back to the pre-June 2016 rates of \$0.20/kg or 35 percent *ad valorem*, whichever is higher, in response to stakeholder concerns.

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 newly imposed duties on spare parts and accessories to solar equipment have reportedly had a negative impact on the business operations of solar home system companies, although they have not been applied uniformly by Kenya in practice. Some stakeholders have expressed concern that the amendment to the EAC's Exemptions Regime is ambiguous because spare parts and accessories to solar equipment are not defined. In addition, varying interpretations among EAC partner states has led to uncertainty and confusion about what products are exempt from import duties.

The United States continues to engage with Kenya bilaterally, as well as regionally under the United States - EAC Trade and Investment Partnership, to address and urge reconsideration of these measures.

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, however, 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.

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 VAT Regulations (2017), which further implements the VAT Act (2013), has reduced the number of VAT refund claims. However, it is still not clear what amount of VAT refund claims are pending or processed during the current fiscal year.

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the Kenya Revenue Authority (KRA) has offered an Alternative Dispute Resolution (ADR) mechanism to provide taxpayers with an alternative, fast-track avenue for resolving some tax disputes.

In December 2015, Kenya ratified the WTO Trade Facilitation Agreement (TFA).

Nontariff Measures

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 have their goods subject to enhanced inspection. For example, importers must obtain a Certificate of Conformity (CoC) or have their goods inspected at the port of entry, which costs approximately 15 percent of the value of imported goods, and poses a risk of the goods being rejected after the payment of shipping costs. Importers that choose to obtain a CoC must apply for an export certification from a pre-shipment inspection company (SGS or Intertek International) that has a contract with the government. Following inspection or obtaining a CoC, the importer must seek an Import Standardization Mark, a stick-on label to be affixed to each imported item, from the Kenya Bureau of Standards. Kenya asserts that its import controls are necessary to address health, environmental, and security concerns.

GOVERNMENT PROCUREMENT

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. In 2014, the government inaugurated the Integrated Financial Management Information System (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 new 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 to goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than Ksh 50 million (approximately \$575,000), 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 to residents of that county.

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 the end of 2017.

Kenya is neither a party to nor an observer of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Over the past year, Kenya has drafted updates to its copyright and trademark legislation, which, if adopted, will strengthen intellectual property rights (IPR) protection and enforcement. Specifically, the Copyright (Amendment) Bill 2017 seeks to address the widespread illegal distribution of copyrighted content online by imposing deterrent penalties for Internet service providers that fail to expunge infringing copyrighted content posted on their networks. However, despite efforts to improve enforcement of IPR, the presence of pirated and counterfeit products in Kenya continues to threaten the health and safety of consumers and impede U.S. business interests.

SERVICES BARRIERS

The National Construction Authority Act of 2011, which regulates Kenya’s construction industry, imposes a 30 percent local content requirement on “foreign contractors,” defined as companies incorporated outside Kenya or with 51 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. Regulations implementing these requirements are in process.

The Private Security Regulations Act of 2016, which came into force in May 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.

INVESTMENT BARRIERS

Kenya imposes foreign ownership limitations of 80 percent and 66.7 percent in the telecommunications and insurance sectors, respectively. In 2015, the government imposed regulations requiring that at least 15 percent of the share capital of derivatives exchanges be owned by Kenyans. A provision of the Companies Act of 2015 required all foreign companies registering to do business in Kenya to cede at least 30 percent ownership to Kenyan citizens, but was repealed in October 2016 after widespread private sector criticism.

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.

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, Kenya Power and Lighting Company (KPL), and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. In July 2016, KPL changed its internal procurement rules to source 80 percent of supplies from Kenyan registered companies.

When making their initial investment, 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 currently considering a local content bill – now awaiting its third and final reading in Parliament in the Committee of the Whole House – 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 must also 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 and the possibility that it could run afoul of Kenya’s commitments under the WTO. The U.S. Government has also raised the issue with the Kenyan government.

The new Mining Act of 2016 restricts foreign participation in some parts of the mining sector. The legislation reserves the acquisition of mineral rights to Kenyan companies; requires 60 percent Kenyan ownership of mineral dealerships; requires 60 percent Kenyan ownership of artisanal mining companies; and requires large-scale mining operations to offer 20 percent equity on the Nairobi Securities Exchange within three years commencing operations, while also offering 10 percent “free-carried interest” (free equity stake in capital operations) to the government of Kenya.

In 2015, the Department of Immigration issued a new directive making it more difficult for non-Kenyans to obtain work permits. 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 non-Kenyans.

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 Community Land Bill (2016) made it easier for communities to claim title over their ancestral land and receive documentation.

BARRIERS TO DIGITAL TRADE

Kenya is considering several new measures that would have a significant impact on the Information and Communications Technology (ICT) sector in Kenya.

The draft ICT Policy contains vague statements about future policies on data localization and states that preference will be given to Kenyan companies in the award of government tenders. Such requirements would serve as market access barriers for foreign ICT services and prevent Kenyans from taking advantage of best-in-class services.

The draft Computer and Cybercrimes Bill, still pending in the Kenyan Parliament, does not adequately protect Internet intermediaries from liability for content created by third parties. The United States has raised this issue with the government of Kenya, informing them these policies could severely limit the ability of firms that permit user-generated content to operate in Kenya.

The ICT Practitioner Bill, currently stalled in Kenya's Parliament, would require all companies seeking to provide ICT services to obtain a Kenyan registration and certification. The bill would also impose additional, onerous requirements related to education, training, registration, and licensing.

OTHER BARRIERS

Access to Credit

In August 2016, President Kenyatta signed into law the Banking (Amendment) Bill, 2015. The law caps the maximum interest rate banks can charge on loans at four percent above the base rate set by the Central Bank of Kenya. It further provides a floor for the deposit rate held in interest earning accounts to at least 70 percent of the Central Bank of Kenya base rate. The International Monetary Fund and other observers have warned that these restrictions will result in a contraction in the availability of credit.

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.

Despite efforts to increase efficiency and public confidence in the judiciary, a backlog of cases and continuing corruption – both perceived and real – burden and reduce the credibility 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 Labour 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 Scrap Metal Act (2014), Kenya prohibits the export of any form of scrap metal absent authorization in order to discourage vandalism of infrastructure and to encourage domestic manufacturing that uses scrap metal as an input. The Agriculture, Fisheries and Food Authority Act (2013) prohibits exports of raw agricultural produce such as macadamia, bixa, cashew nuts, and pyrethrum without express authorization from the Cabinet Secretary for Industry, Trade, and Cooperatives.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was \$22.9 billion in 2017, a 17.0 percent decrease (\$4.7 billion) over 2016. U.S. goods exports to Korea were \$48.3 billion, up 14.1 percent (\$6.0 billion) from the previous year. Corresponding U.S. imports from Korea were \$71.2 billion, up 1.8 percent. Korea was the United States' 7th largest goods export market in 2017.

U.S. exports of services to Korea were an estimated \$23.2 billion in 2017 and U.S. imports were \$11.0 billion. Sales of services in Korea by majority U.S.-owned affiliates were \$14.1 billion in 2015 (latest data available), while sales of services in the United States by majority Korea-owned firms were \$24.1 billion.

U.S. foreign direct investment (FDI) in Korea (stock) was \$39.1 billion in 2016 (latest data available), a 5.8 percent increase from 2015. U.S. direct investment in Korea is led by manufacturing, finance/insurance, and wholesale trade.

TRADE AGREEMENTS

United States-Korea Free Trade Agreement

The United States-Korea Free Trade Agreement (KORUS, or the Agreement) entered into force on March 15, 2012. While six rounds of tariff cuts have taken place under the KORUS FTA, the United States has serious concerns over the terms of KORUS and Korea's implementation of its obligations under the Agreement. Ongoing areas of concern range from onerous verifications to demonstrate U.S. origin to unique standards to regulations that favor Korean firms by creating additional challenges and costs that have undermined the potential benefits under the agreement for U.S. exporters. In July 2017, at the direction of the President, USTR initiated a process to amend and modify the Agreement.

The United States did see initial gains from services trade in the early years of implementation; however, services export growth has since stalled. In 2011, the United States benefited from \$16.7 billion in services exports, which grew to \$21.0 billion in 2013. But exports have remained virtually flat since then. In 2017, the United States only exported \$23.2 billion of services to Korea. Growth in U.S. manufactured goods exports to Korea saw a 13.5 percent increase above pre-FTA levels. Although, the growth in Korean manufactured goods exports to the United States rose 25.8 percent over the same period. In 2017, U.S. agricultural products good exports totaled \$6.9 billion. While some U.S. agricultural exports to Korea have increased since the FTA came into effect, compared to pre-FTA levels, overall U.S. agricultural goods exports to Korea are down by 1.1 percent.

In July 2017, USTR called for a special session under the Agreement to seek changes to rebalance the KORUS FTA in ways that will be more favorable to American workers and businesses. An agreement in principle was announced on March 27, 2018, and the agreement is being finalized. The United States secured commitments to double the amount of U.S. standards compliant vehicles, as well as a reduction in numerous regulatory and non-tariff barriers. In addition, important implementation issues regarding customs and pharmaceuticals were resolved.

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 about K-REACH, centering on the lack of guidance on the ongoing implementation of this law, Korea's lack of transparency during the development of K-REACH's rules and requirements, the insufficient time for companies to implement K-REACH's requirements, and K-REACH's lack of protection for confidential business information. The United States has raised these concerns numerous times, including through KORUS and at WTO Committee on Technical Barriers to Trade (TBT) meetings.

In 2017, the Ministry of Environment (MOE) introduced an amendment to K-REACH that changed the registration and reporting requirements, and creating special provisions for small businesses. The amendment is currently pending at the National Assembly and is likely to be adopted in the second half of 2018. The United States continues to urge Korean ministries to base regulations on scientific evidence and will engage Korean authorities as implementation progresses.

Information Technology Equipment – Cybersecurity Testing Requirements

Korea launched the Network Verification Scheme (NVS) on October 1, 2014. NVS sets forth new Korea-specific requirements for network equipment such as routers or switches procured by Korean government entities and requires agencies to submit procured equipment to the National Intelligence Service (NIS) for mandatory testing. Although Korea is a member of the Common Criteria Recognition Arrangement (CCRA), which sets cybersecurity standards for government-procured information technology (IT) equipment, NIS does not consider CCRA-certified equipment as compliant with the NVS, absent additional in-country testing. U.S. stakeholders have raised concerns that the NVS ignores Korean commitments in the CCRA. The United States continues to press for greater transparency and acceptance of CCRA-certified equipment without further in-country testing.

Alcohol Labeling

On July 29, 2016, Korea notified to the WTO new health warning labels to be required on all alcoholic beverages sold in Korea. One of the labels contains the statement "alcohol is a carcinogen," thereby asserting a direct link between alcohol consumption and cancer. Korea is the first country in the world to require such a label. Although Korea's WTO notification purported to allow a 60-day comment period, the final requirements on warning labels were published halfway through the comment period with an immediate effective date and only a six-month grace period to comply. The United States has raised concerns with Korea's process for notifying this measure, which did not allow for meaningful consultation with trading partners, as well as the scientific basis for making the assertions printed on the labels.

Wood Products

In 2014, Korea's National Institute of Forest Service began publishing standards for 11 wood products without room for acceptance of North American standards widely used in the United States, Canada, Brazil, 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 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 encourage Korea to recognize the U.S. 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.

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, or "events," is onerous and protracted due to inefficiencies that include redundant reviews and data requests. For example, approval of events, 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 a pilot project is underway to test a streamlined process for biotech reviews. However, Korea's Living Modified Organisms Act mandates participation by five agencies, which limits the potential for improving the system without legislative changes. The United States will continue to engage with Korea on improving its approval process.

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 2017, the United States exported over \$1.2 billion in beef (including variety meats) to Korea, making Korea the second largest export market for U.S. beef by value and third by volume.

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 ("QIA"), including U.S. access for blueberries from States beyond Oregon; improvement in the cherry export program; and access for apples and pears, which are currently banned. The two governments discussed these issues at the 2017 APHIS plant bilateral meetings and at the USTR-led KORUS Sanitary and Phytosanitary Committee meeting held in November 2017. The United States continues to press Korea to allow imports of these fruits from the United States.

Maximum Residue Limits

Korea is in the process of shifting to a new "positive list" system 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 level (MRL) has been established. Korea implemented the positive list in December 2016 for tropical fruits, oil seeds, and tree nuts and plans to do so in December 2018 for all other plant products and in December 2020 for meat, poultry, and other animal products.

Korea is requiring the establishment of new import tolerances for agrochemicals and veterinary drugs previously registered for use in Korea, as well as for new substances not yet registered for use in Korea. In order to minimize disruption to trade, Korea delayed the elimination of existing MRLs for substances not registered for use in Korea until the end of 2021. The United States will continue to work with Korea to ensure a smooth transition to the positive list.

Potatoes

In 2012, Korea imposed a prohibition on the importation of fresh table-stock potatoes from U.S. States in the Pacific Northwest 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 Pacific Northwest in the 2018 shipping season. 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.

IMPORT POLICIES

Origin Verification

U.S. exporters and producers have raised serious concerns that the Korea Customs Service (KCS) continues to conduct unduly onerous verifications for claims of preferential tariff treatment under the KORUS FTA. For a number of agricultural and industrial products, KCS has reportedly required excessive and unnecessary documentation during the verification process, costing U.S. exporters considerable time and money and jeopardizing preferential treatment for some U.S. exports. U.S. exporters also have identified a lack of coordination and inconsistent application of documentation and other verification standards among KCS offices as challenges. U.S. exporters in addition report that KCS has rejected KORUS certifications of origin for minor errors and limited the ability of companies to make corrections to certifications, further jeopardizing preferential tariff treatment for U.S. products.

Since 2013, the United States has worked closely with Korea to resolve such issues and ensure that U.S. exporters and producers receive the benefits provided for under KORUS. 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. Through discussions in the KORUS Committee and related discussions, the United States has pressed for the resolution of the verification challenges faced by U.S. exporters. One outcome from the Administration’s KORUS talks is a commitment from Korea to follow proper verification principles and to cooperate in a working group dedicated to resolving these issues. The United States will continue to seek substantial improvements as well as monitor developments in this area in 2018, including addressing both specific cases as they arise and broader issues relating to proper verification under KORUS.

Tariffs and Taxes

Korea’s simple average MFN tariff rate is 13.9 percent. Under KORUS, Korea has eliminated tariffs on more than 95 percent of U.S. manufactured goods. Korea also has 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 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 2017 Korea announced voluntary, duty free, MFN TRQs for the feed grain complex (19 commodities), including maize, 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 ten-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 Australia, China, Thailand, and the United States.

The MMA arrangement expired at the end of 2014, and on January 1, 2015, Korea initiated its WTO tariffication process. In the meantime, Korea continues to import 408,700 metric tons of rice annually through a global TRQ, instead of the country-specific quotas that were in place. 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. Under the global TRQ, United States market share in 2015, 2016, and 2017 accounted for 38 percent, 41 percent, and 34 percent, respectively.

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 \$191,000). 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 (\$23 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.

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 NIS has managed this process in a nontransparent fashion, without public comment periods, and has broadly construed these requirements to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders also 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-PBXes. The U.S. Government has raised this issue with Korea in bilateral consultations and will continue to work with Korea in 2018, including within the CCRA, to address concerns.

Korea applies the Data Protection Standards for Cloud Computing Services (the "CCPA Guidelines"), which recommend data residency and network separation for all public institutions, including educational institutions. Both requirements severely undermine market access opportunities for foreign cloud service suppliers, as the requirements are inconsistent with most cloud service business models. Although the CCPA Guidelines are only a recommendation, U.S. businesses in Korea contend that this serves as a market access barrier for small and medium-sized enterprises (SMEs) and start-ups.

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.

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 SMEs and strategic industries and, in 2015, 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.

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 also 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

Screen and Broadcast Quotas

In Korea, foreign programs may not exceed 20 percent of terrestrial TV 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 music content broadcasted. Another quota, applied on a quarterly basis, 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.

Legal Services

Over the past five years, Korea has taken certain 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 law allows 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, allows 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 on March 15, 2017, allows foreign-licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

On February 4, 2016, the National Assembly amended the Foreign Legal Consultants Act to allow joint ventures in Korea between domestic law firms and law firms from the United States and other countries with similar provisions in their free trade agreements. The Act contains several requirements that are unique to Korea and 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. 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.

Insurance and Banking

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 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, 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’s security review in the application process. Some difficulties remain given consent requirements, as data cannot be transferred even to another related corporate entity if consent is not obtained. 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 relating to data transfer.

Korea allows banks and insurance companies to utilize cloud computing for limited functions. The United States will continue to encourage Korea to further liberalize the functions for which banks and insurance companies can utilize cloud computing services, consistent with prudential objectives.

Credit and Debit Card Payment Services

U.S. stakeholders have raised concerns that the Financial Services Commission and the Financial Supervisory Service appear to be exerting pressure on financial institutions to steer customers toward

domestic brand cards rather than international brands, as well as pursuing other policies that may discriminate against U.S.-branded credit and debit card services, and limit the products U.S. suppliers are able to offer to Korean consumers. The United States continues to monitor closely developments in the credit and debit card services area, and to work with the Korean government to ensure there is no discrimination against U.S. service providers.

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 on 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 reserved additional sectors for SMEs, but these have not affected U.S. companies. The United States will continue to monitor KCCP's activities closely in 2018 and raise concerns where they arise.

Telecommunications

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 2018.

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. As of March 15, 2015, U.S. investors can own channels on a cable or satellite system, but foreign 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. Enterprises

publishing newspapers are subject to a 30 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, the KFTC can levy sizeable administrative fines for violations of the laws it enforces as well as for failure to cooperate with investigators. Decisions by the KFTC are appealable to the Korean court system. As part of KORUS implementation, the KFTC instituted a consent decree process in 2014, which it continues to refine. The U.S. Department of Justice and the Federal Trade Commission signed a Memorandum of Understanding with the KFTC in September 2015 to promote increased cooperation and communication between the competition agencies in both countries.

A number of U.S. firms have raised serious concerns that the KFTC has targeted foreign companies with more aggressive enforcement efforts and that KFTC procedures and practices have inhibited their ability to defend themselves during KFTC investigatory proceedings. Throughout 2017, the United States raised these concerns in detail in discussions with officials from the KFTC as well as the Korean Ministry of Trade, Industry, and Energy. The U.S. Government will continue to discuss these issues with Korea to ensure full implementation of its competition-related KORUS obligations.

BARRIERS TO DIGITAL TRADE

Data Localization

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 their products. For example, foreign-based suppliers of interactive services incorporating 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.

Korea has to date 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.

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.

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 providers to the detriment of foreign service providers. 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 providers report that it would not be cost effective for global companies to meet these requirements, leaving Korean providers as the only ones willing to meet these standards. The U.S. Government and industry 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.

Other Issues

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.

The United States has raised the issue with Korea on multiple occasions, urging it to lift what appear to be unreasonable and unnecessary restrictions. 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. The United States will continue to raise this issue with Korea in 2018.

U.S. enterprises have also expressed concerns with respect to requirements regarding value-added tax (VAT) payments for certain transactions conducted in Korea. The U.S. Government and industry will continue to monitor this issue closely.

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States. Upon entry into force of KORUS, Korea immediately reduced the tariff on passenger vehicles from eight percent to four percent, and the remaining four percent tariff on passenger vehicles was eliminated on January 1, 2016. In addition, KORUS contains provisions designed to address nontariff barriers, including provisions requiring Korea to allow U.S. exporters to market up to 25,000 cars per manufacturer in Korea annually that are built to U.S. safety standards rather than Korean standards, greatly reducing the cost of supplying U.S.-made cars to the Korean market. As a result of USTR's negotiations on KORUS, this cap will be doubled to 50,000. Korea also modified its key motor vehicle taxes so that U.S. cars are now in the same tax brackets as their domestic competitors. KORUS also includes transparency provisions to help ensure that automakers have sufficient opportunity to participate in the setting of new regulations and adequate time to adjust to changes in new regulations. U.S. automobile exports to Korea increased by 271 percent from 2011 to 2017, from \$419 million in 2011 to \$1.6 billion in 2017.

USTR's efforts to improve the Agreement also will resolve numerous longstanding regulatory barriers. The 2016-2020 update of Korea's CO₂/Corporate Average Fuel Economy (CAFE) emissions and fuel efficiency regulations was finalized and promulgated on December 30, 2014. The updated regulations mandate a CAFE emission target of 97 g/km average carbon dioxide emissions by 2020. Korea reflected stakeholder comments related to the small volume manufacturer threshold (sales of 4,500 or fewer vehicles in 2009), but will gradually reduce the 19 percent leniency factor provided to small volume manufacturers to 8 percent by 2020. To help meet Korea's 2020 CAFE emission targets, industry requested that Korea recognize various off-cycle and eco-innovation credits that are recognized in the United States and the European Union. After consultations with the industry, the MOE revised and expanded its off-cycle and eco-innovation credits, effective December 30, 2015. As MOE continues to clarify its automotive emissions policies, the United States will continue to engage with Korea to ensure that these policies are implemented in a fair, transparent, and predictable manner, consistent with KORUS. Through the Autos Working Group established under KORUS, the United States urged the 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. MOE intends to conduct such an implementation review in 2018, but has stated that the results will not lead to revisions of existing 2020 targets. Korea has agreed to favorably resolve CAFE issues as an outcome of the current negotiations.

The MOE is revising the Emission Related Components (ERC) certification regulation under the Clear Air Conservation Act to increase the penalty if a company is found to be in violation. This regulation requires automobile import documents to reflect all changes made by components suppliers, even very minor ones, before the vehicles arrive in Korea. The automobile industry has expressed its concern that this regulation creates barriers to trade and is contrary to international practice. Automakers also have said that while, in principle, this regulation applies to all automobiles, it is currently being applied to only imported cars. Automobile importers have called for the MOE to revise the regulations to eliminate these trade barriers.

Korea has agreed in the context of current talks to accept U.S. environmental testing results going forward.

Repair History Reporting

Pursuant to an amendment of the Motor Vehicle Management Act, Korea requires that all automobile manufacturers or dealers report vehicle repair histories to vehicle purchasers to account for any damage taking place between the manufacturing site and customer delivery. U.S. stakeholders raised concerns that this reporting requirement could create obstacles for imports, because vehicles arriving from overseas often undergo minor reconditioning prior to sale. (While not regulated at the federal level in the United States, 36 states have some type of damage reporting requirement, though these differ in important ways from the requirement in Korea, such as by exempting certain types of damage and establishing *de minimis* levels of damage that would not need to be reported.)

U.S. stakeholders requested that Korea's Ministry of Land, Infrastructure, and Transport (MOLIT) draft subordinate implementing regulations that would clarify the Motor Vehicle Management Act so that MOLIT would recognize Korean pre-delivery inspection facilities, rather than U.S.-based manufacturing plants, as the conclusion of the manufacturing process. They also requested that Korea, like U.S. States, consider establishing a *de minimis* rule on what repairs require reporting. In response to industry feedback, MOLIT commissioned a study on the *de minimis* rule and in June 2016 proposed a revision to these damage disclosure rules that would require manufacturers or dealers to disclose only vehicle damage that is greater than 3 percent of the manufacturer's suggested retail price (MSRP) of the vehicle. MOLIT also indicated that it would allow any damaged parts replaced with original equipment manufacturer (OEM) sourced parts to be excluded from the damage calculation, with the exception of OEM bumpers. The American Automotive Policy Council and the Korea Automobile Importers and Distributors Association have requested that MOLIT, like many U.S. States, set the reporting threshold at no less than 4.5 percent of the MSRP and allow the OEM exception to cover bumpers. MOLIT has not yet made a final decision. Because an implementing guideline has not yet been issued, MOLIT has not yet started enforcing the reporting requirement. The U.S. Government has raised this issue with Korean authorities and will continue to address the issue in 2018.

"Right to Repair"

On March 30, 2016, MOLIT announced revised regulations under the Motor Vehicle Control Act, which requires automakers to provide training materials and access to diagnostic tools and security codes to independent automobile repair shops so that the shops can provide levels of service similar that of car dealerships. Many of the revisions were responsive to U.S. stakeholder concerns. The U.S. automobile industry continues to request additional revisions, including clarifications to the manner in which training must be delivered and changes to the timing of requirements regarding security-related reprogramming and protection of proprietary information. MOLIT allowed a one-year grace period for the requirement regarding diagnostic tools and security-related services, which expired in March 2017, but has since taken no enforcement action. The United States will closely follow this issue in 2018.

Amber Turn Signal Lights

On November 1, 2016, MOLIT asked manufacturers that import vehicles with red turn-signal lights to change the color to amber, contending that drivers could confuse the red signal lights with brake lights and cause traffic accidents. MOLIT has acknowledged that there is no prohibition against red turn-signal lights installed on vehicles that qualify as originating under KORUS and comply with U.S. safety standards. However, a MOLIT official requested the "voluntary" change in color during a meeting with industry members. According to import manufacturers, the official said that if they are not able to cooperate with this request, MOLIT will "strictly apply its authority to implement the law." The United States will closely

monitor MOLIT's actions in 2018 to ensure continued compliance with KORUS.

Motorcycles

Korea's longstanding ban on driving motorcycles on expressways continues, which U.S. stakeholders argue constrains potential sales. Korea views this ban as a necessary safety measure, and has pointed to a 2011 study commissioned by the Korean National Police on the safety of motorcycles on highways. The study highlighted inadequacies in Korea's regulatory and safety practices surrounding the licensing of motorcycle drivers and the proliferation of young, untrained motorcycle riders driving dangerously on city streets. The United States takes the position that fit-for-purpose heavy motorcycle riding does not pose safety concerns significant enough to warrant a complete ban and continues to urge Korea to allow large motorcycles on expressways.

Pharmaceuticals and Medical Devices

The United States has urged Korea to seriously consider stakeholders' concerns and 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 the lack of transparency and predictability of Korea's pricing and reimbursement policies and their underlying methodology. These policies continue to generate considerable uncertainty for stakeholders, which depend on long-term planning for the investment decisions that support research and development. As an example of one concern in this arena, on July 7, 2016, the Ministry of Health and Welfare (MOHW) announced a new pricing and reimbursement policy, which took effect on October 24 of that year. MOHW announced a further amendment to this policy on October 24, as well as plans to clarify certain qualifying criteria for companies, but a final decision on pricing guidelines was postponed from September 30, 2017 to the end of 2018. Some stakeholders and the United States have expressed concern that certain eligibility requirements for premium pricing available via the policy appear to unfairly disadvantage U.S. exporters. Industry and the United States seek remediation of this specific concern to help address broader concerns arising out of Korea's pricing and reimbursement system. While the referenced MOHW amendments address pharmaceuticals, stakeholders in the U.S. medical devices sector also identify specific pricing and reimbursement concerns, including insufficient transparency and meaningful engagement with government officials; reimbursement decisions that do not appropriately value of innovations; and delays in market access. In a concern relating to Korea's implementation of a unique device identifier system for medical devices, stakeholders urge Korea to ensure that industry information reporting requirements not extend to pricing information but instead focus on safety-related information. The United States urges Korea to closely engage with industry and will continue to monitor these issues closely in 2018. Due to these issues, USTR secured a commitment from Korea during the recent KORUS talks to ensure that U.S. companies receive the same treatment as Korean companies with respect to reimbursement practices. Specifically, Korea will amend its governing regulations to ensure non-discriminatory treatment of U.S. pharmaceutical exports.

KUWAIT

TRADE SUMMARY

The U.S. trade balance with Kuwait shifted from a goods trade deficit of \$6 million in 2016 to a goods trade surplus of \$2.3 billion in 2017. U.S. goods exports to Kuwait were \$5.2 billion, up 56.8 percent (\$1.9 billion) from the previous year. Corresponding U.S. imports from Kuwait were \$2.9 billion, down 11.7 percent. Kuwait was the United States' 40th largest goods export market in 2017.

Sales of services in Kuwait by majority U.S.-owned affiliates were \$452 million in 2015 (latest data available), while sales of services in the United States by majority Kuwait-owned firms were \$888 million.

U.S. foreign direct investment (FDI) in Kuwait (stock) was \$189 million in 2016.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Beef and Poultry

U.S. exporters experienced an unacceptably high rate of rejections of U.S. halal-certified processed beef and turkey products in 2017, 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.

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a “GCC Guide for Control on Imported Foods” in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC's failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

IMPORT POLICIES

Tariffs

As a member of the 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 and agriculture items that are exempt from customs duties.

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, and tobacco products, implementation varies by Member State. U.S. beverage producers report 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.

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.

Import Prohibitions and Licenses

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.

GOVERNMENT PROCUREMENT

Kuwait is not a signatory to, nor an observer of, the WTO Agreement on Government Procurement. Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 5,000,000 (approximately \$16,500,000) be conducted through the Central Agency for Public Tenders. Kuwait provides a 15 percent price preference for domestic goods and 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2017, Kuwait remained on the Special 301 Priority Watch List, and there are intellectual property rights (IPR) issues that continue to represent barriers to U.S. exports and investment. Though Kuwait passed a new Copyright and Related Rights Law in May 2016 and issued implementing regulations in June 2017 to address previously identified shortcomings, important deficiencies and ambiguities still exist in its copyright regime, including with respect to remedies, damages, the term of protection, and the scope of certain exceptions for reproduction. While the United States commends Kuwait's improvement in enforcement efforts against IPR violations, including by taking actions against pirated materials online and conducting raids and criminal trials, the United States continues to encourage Kuwait to devote additional resources to curbing the manufacture and sale of counterfeit and pirated goods and to increase fines and penalties to deterrent levels. In 2017, the U.S. Government and stakeholders engaged with the Kuwaiti government to address these outstanding concerns, including considering amendments to the 2016 Copyright Law and streamlining and improving enforcement measures.

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

SERVICES BARRIERS

Banking

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

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

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 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 overall country's investment climate. 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 \$71 million in 2017, a 191.7 percent increase (\$46 million) over 2016. U.S. goods exports to Laos were \$26 million, down 16.9 percent (\$5 million) from the previous year. Corresponding U.S. imports from Laos were \$96 million, up 74.8 percent. Laos was the United States' 182nd largest goods export market in 2017.

TRADE AGREEMENTS

Laos has a network of bilateral and regional trade agreements with countries in the Indo-Pacific region as well as countries from other regions. Current trade agreement partners include Australia, China, India, Japan, Korea, and New Zealand. Laos is a party to the region-wide Association of Southeast Asian Nations (ASEAN) trade agreement. In November 2017, the ASEAN countries – including Laos – signed a free trade agreement with Hong Kong. Laos is participating in the 16-member Regional Comprehensive Economic Partnership negotiations.

SANITARY AND PHYTOSANITARY BARRIERS

Laos established its most recent regulations relating to sanitary and phytosanitary (SPS) standards in 2012. The Laos government is working with the Asian Development Bank and other donors to address the uneven implementation of SPS regulations at entry points. This work includes refinement of Laos' SPS regulations and related processes as well as efforts to strengthen the technical knowledge of enforcement officials.

IMPORT POLICIES

Tariffs

Laos' membership in the WTO and ASEAN spurred increased trade liberalization and small improvements in the business environment. The government under Prime Minister Thongloun Sisoulith has made improving the business and investment climate in Laos a top priority, and has made further progress.

Laos' average applied MFN tariff rate is 10 percent (8.3 percent for industrial goods and 20.1 percent for agricultural products). Laos' average bound MFN tariff rate will be 18.4 percent when all WTO accession commitments come into force in 2023.

Nontariff Barriers

In late 2017, in response to an earlier study by the United Nations Conference on Trade and Development (UNCTAD) and the Economic Institute for ASEAN and East Asia (ARIA), the Laos Ministry of Commerce and Industry reported that it had reduced the total number of non-tariff measures (NTMs) to fewer than 250. The UNCTAD/ARIA study, published in 2016, identified 70 regulations that resulted in 301 NTMs. The study found that, taken together the NTMs affected all tariff lines, and were concentrated in the areas of SPS, technical barriers to trade, price control measures, and export-related measures.

Certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, timber products, cement, and steel, are subject to import licensing.

Customs Procedures

The Laos Customs Department determines customs value based on transaction value according to the WTO Agreement on Customs Valuation. However, U.S. businesses have raised concerns about irregularities and corruption in the customs clearance process. In response, in 2016, the Laos government implemented a new digital payment system for importers in an effort to speed up the customs clearance process and reduce corruption. In addition, Laos expanded automated customs processing under the ASYCUDA system (Automated System for Customs Data) to 24 offices throughout the country, and introduced a risk management-based approach to the inspection process. These measures, along with other initiatives, have resulted in quicker customs clearance, with average clearance time in customs coming down from eleven and a half hours in 2012 to six and a half hours in 2016, according to the Laos government.

Since signing the WTO's Trade Facilitation Agreement (TFA) in February 2017, Laos has begun drafting a Trade Facilitation Roadmap and Action Plan for 2017-2022.

Taxation

Laos has been implementing a value-added tax (VAT) system since 2013. The standard VAT rate of ten percent applies to most domestic and imported goods and services, with some limited exemptions. Laos also is seeking to implement excise taxes on some goods, such as vehicles, to restore revenue lost from tariffs bound under the WTO and ASEAN agreements. U.S. and other foreign companies have raised concerns to the U.S. and Laos governments about duplicative, arbitrary, or selectively enforced tax provisions. The United States will continue to engage with Laos bilaterally to address these concerns.

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. In December 2015, Laos completed its accession to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol), and the Madrid Protocol entered into force with respect to Laos in March 2016. In November 2017, Laos' National Assembly approved new amendments to the Law on Intellectual Property, but the final draft of the law was not yet publicly available as of December 2017.

The United States will continue to engage bilaterally with Laos under our bilateral Trade and Investment Framework Agreement (TIFA) and other dialogues to urge Laos to take steps to improve IPR protection and enforcement, including through developing judicial capacity to adjudicate IPR cases and increasing public awareness of the importance of IPR.

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.

Telecommunications Services

No U.S. telecommunications providers are active in Laos due in part to Laos being a saturated market with five telecommunications providers, its small market, and because the government establishes price controls for telecommunication services that limit free competition.

Financial Services

In November 2017, the National Assembly passed the Law on National Payments. As worded, the Law is vague and could affect how electronic payments are processed in Laos, but, until implementing decrees are issued, it is unclear what the impact of the law will be.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to corruption, difficulty 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. The United States will continue to urge the Laos government to address these issues.

BARRIERS TO DIGITAL TRADE

Decree 327 on Information Management on the Internet, issued in 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

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 in the Gazette for at least 60 days. However, not all government agencies post their laws and regulations, and often when they do, few opportunities remain for shaping the draft law.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was \$24.6 billion in 2017, a 0.9 percent decrease (\$215 million) over 2016. U.S. goods exports to Malaysia were \$12.8 billion, up 8.4 percent (\$994 million) from the previous year. Corresponding U.S. imports from Malaysia were \$37.4 billion, up 2.1 percent. Malaysia was the United States' 23rd largest goods export market in 2017.

U.S. exports of services to Malaysia were an estimated \$3.1 billion in 2016 (latest data available) and U.S. imports were \$1.9 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were \$7.6 billion in 2015 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were \$472 million.

U.S. foreign direct investment (FDI) in Malaysia (stock) was \$13.9 billion in 2016 (latest data available), a 7.2 percent decrease from 2015. U.S. direct investment in Malaysia is led by manufacturing, finance/insurance, and mining.

TRADE AGREEMENTS

Malaysia has a network of bilateral and regional trade agreements with countries in the Indo-Pacific and other regions including with Australia, Chile, China, India, Iran, Japan, Korea, New Zealand, and Pakistan. Malaysia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) agreement and in November 2017, the ASEAN countries - including Malaysia - signed a free trade agreement with Hong Kong. In March 2018, they signed the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Malaysia also is negotiating agreements with the European Union, and the 16-member Regional Comprehensive Economic Partnership.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Meat and Poultry Products – Halal Standards

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. 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 Malaysian authorities. Foreign producers' halal practices must be inspected and approved for conformity with Malaysian standards before the plant is permitted to export to Malaysia.

In December 2014, following an October 2014 audit, Malaysia's Department of Veterinary Services (DVS) and Malaysia's Department of Islamic Development (JAKIM) approved one U.S. turkey plant and one U.S. beef plant to export specific halal certified products to Malaysia. In September and October of 2017,

Malaysian government representatives visited one beef and three poultry facilities in the United States (along with five pork facilities falling outside of the scope of the halal audit). In February 2018, Malaysia informed the United States of the results of the audit. Although JAKIM and DVS approved the beef plant, they rejected all three turkey plants due to inconsistencies with Malaysia's halal standards.

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 certifiers, or "certifying bodies" (CBs), to inspect and certify halal. Two additional U.S. organizations have applied to become CBs. JAKIM plans to conduct site audits after the middle of 2018.

Medical Devices - Development of Halal Standard

In August 2017, Standards Malaysia issued a draft standard for halal medical devices (JSM17/ISC/I-01RO) for public comment. Industry has expressed concern regarding the overly broad scope of the halal medical device standard, which does not distinguish between medical devices that contain organic matter and those that do not. Industry worries that this may result in costly halal inspection processes. Industry stakeholders have also expressed concern that Malaysian authorities will make procurement decisions based on compliance with the new standard. A compliance scheme and implementation guidelines for the standard are expected to be released in 2018.

Infant and Follow-up Formula Products

In 2014, Malaysia's Ministry of Health launched an effort to revise and expand its existing Code of Ethics for the Marketing of Infant Foods and Related Products ("Code of Ethics"). The proposed revisions include restrictions on the use of trademarked brand names and symbols on product labels or packaging, as well as restrictions on educational, promotional, and marketing activities for infant formula products and products for toddlers and young children. To date, the draft of the Code of Ethics has not been made available for comment.

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 early 2018, the Malaysian Ministry of Health is not enforcing the amendments.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Crops derived from biotechnology are generally not approved for cultivation in Malaysia. Malaysia permits biotechnology crops to be sold in the Malaysian market only if they have been approved for use in food and feed, and for processing. As of June 2017, Malaysia had approved 6 cotton, 1 rapeseed, 14 corn, and 7 soybean events. However, Malaysia has not established a standard for low-level presence of unapproved events. Bulk shipments of corn and soybeans may be rejected if a variety that has not yet been approved is detected. So far, however, this has not resulted in trade disruptions. In 2013, the Malaysian government published new biotechnology labeling guidelines, including guidelines for processed food.

IMPORT POLICIES

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis, with an average applied tariff of 6.1 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.

The Malaysian government maintains tariff-rate quota systems for 20 tariff lines, including live, chilled and frozen poultry, poultry meat, milk, cream, pork, and round cabbage. These products face in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 168 percent.

A large number of Malaysian tariff lines related to import-sensitive or strategic industries, principally in the construction equipment, agricultural, mineral, and motor vehicle sectors, are subject to import licensing requirements.

Import Restrictions on Motor Vehicles

Malaysia continues to impose import restrictions on automobile imports under the Malaysian National Automotive Policy (NAP), which makes a fundamental distinction between "national" cars (*e.g.*, domestic producers Proton and Perodua) and "non-national" cars, which include other vehicles assembled in Malaysia, as well as imports. The 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. The NAP also provides that automotive excise taxes be set based on the value of local content, which disadvantages imports of autos and automotive parts in the Malaysian market.

Import Licensing

U.S. stakeholders report that Malaysia imposes non-automatic import licensing requirements on alloy steel products.

Excise 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.

EXPORT POLICIES

Export taxes

Malaysia taxes exports of palm oil, rubber, and timber products in order to encourage domestic processing. 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 2018, the export tax is close to 6 percent of the Free On Board price. Refined palm oil and refined palm oil products are not subject to export taxes.

Export Licensing

U.S. stakeholders report Malaysia imposes non-automatic export licensing requirements on exports of 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 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 these possible flexibilities and whether they are available to all companies. Bank Negara has not disclosed how many firms have been granted exceptions under the case by case review process.

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 an observer to the WTO Agreement on Government Procurement but is not a signatory.

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, some of which appear to be contingent on export performance or on the use of domestic over imported goods, which Malaysia did not address in its 2017 WTO subsidies notification. 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.

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 copyright and counterfeit trademark goods, high rates of piracy over the Internet, book piracy, and issues related to pharmaceutical patents. In addition, the United States has 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.

SERVICES BARRIERS

Telecommunications

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 currently permitted in those categories, although in certain instances Malaysia has allowed greater equity participation.

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. Department stores, supermarkets, and hypermarkets are required to reserve at least 30 percent of shelf space in their premises for goods and products manufactured by Bumiputera-owned small and medium sized enterprises. Malaysia is currently reviewing the guidelines for retailers. The Malaysian government also issues “recommendations” for local content targets, which are, in effect, mandatory.

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 if all directors and shareholders 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.

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 evaluates potential investments in these financial institutions based on general “Best Interests of Malaysia” criteria. As of early 2018, Bank Negara had not released specific guidelines for foreign investment in financial institutions to qualify under the “Best Interest” general criteria. The United States continues to raise with Malaysia concerns that administration of the Best Interests of Malaysia general criteria is not transparent and could be used to unevenly impose investment restrictions, including equity caps.

Bank Negara currently limits foreign banks to eight 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 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 published an Exposure Draft on Outsourcing that may require financial institutions to localize certain information technology activities. Requiring that data be locally stored does not increase security or access to data for regulatory purposes, and the United States continues to encourage Malaysia to allow financial institutions to utilize global hardware and software systems throughout their worldwide operations so that worldwide security and commercial risk can be effectively managed.

Bank Negara issued a draft regulation for interoperable credit transfers in December 2017. The framework requires that financial institutions process credit transfers in Malaysia via an operator of a shared payment infrastructure that would be partially owned by the central bank. U.S. stakeholders have expressed concern that a shared payment structure creates a single point of failure that could lead to heightened cybersecurity risks and stifle competition. The United States continues to monitor these developments and raise concerns, in particular with requirements that certain transactions be processed in Malaysia and data be stored in Malaysia.

Audiovisual and Broadcasting

Foreign investment in cable and satellite platforms is permitted through joint ventures, with foreign equity capped at 30 percent. No foreign direct investment restrictions apply to the wholesale supply of pay television programming. Malaysia prohibits foreign investment in terrestrial broadcast networks.

INVESTMENT BARRIERS

As described above, 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.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$71.1 billion in 2017, a 10.4 percent increase (\$6.7 billion) over 2016. U.S. goods exports to Mexico were \$243.0 billion, up 5.8 percent (\$13.3 billion) from the previous year. Corresponding U.S. imports from Mexico were \$314.0 billion, up 6.8 percent. Mexico was the United States' 2nd largest goods export market in 2017.¹⁵

U.S. exports of services to Mexico were an estimated \$33.3 billion in 2017 and U.S. imports were \$26.3 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$42.8 billion in 2015 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$8.6 billion.

U.S. foreign direct investment (FDI) in Mexico (stock) was \$87.6 billion in 2016 (latest data available), a 1.0 percent increase from 2015. U.S. direct investment in Mexico is led by manufacturing, nonbank holding companies, and mining.

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 agreements on labor and the environment. The United States entered into negotiations with the Parties seeking to update and rebalance the NAFTA, by addressing many of these barriers, among other issues, in August 2017.

¹⁵ The international shipment of non-U.S. goods through the United States can make standard measures of bilateral trade balances potentially misleading. For example, it is common for goods to be shipped through regional trade hubs without further processing before final shipment to their ultimate destination. This can be seen in data reported by the United States’ trading partner Mexico. The U.S. data report a \$71.0 billion goods deficit with Mexico. Mexico reports a substantially larger U.S. goods surplus -- \$132.4 billion -- in the same relationship. This reflects the large role of re-exported goods originating in other countries (or originating in one NAFTA partner, arriving in the United States, and then returned or re-exported to the other partner without substantial transformation).

U.S. statistics count goods coming into the U.S. customs territory from third countries and being exported to our trading partners, without substantial transformation, as exports from the United States. Mexico, however, counts these re-exported goods as imports from the actual country of origin. In the same way, Mexican export data may include re-exported products originating in other countries as part of their exports to the United States, whereas U.S. data count these products as imports from the country of origin. These counting methods make each country’s bilateral balance data consistent with its overall balance, but yield large discrepancies in national measures of bilateral balance. It is likely that a measure of the U.S. trade deficit with Mexico excluding re-exports in all accounts would be somewhere in between the values calculated by the United States and by our country trading partner.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

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 included 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 Technical Barriers to Trade (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, which is late April 2018. Throughout 2018, 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

On April 6, 2016, Mexico notified to the WTO its Draft Official Mexican Standard PROY-NOM-199-SCFI-2015, "Alcoholic Beverages – Names, Physical-Chemical Specifications, Commercial Information, and Testing Methods" (NOM 199). In response, the United States and U.S. alcohol beverage industries submitted comments to Mexico in April 2016, raising concerns with certain aspects of the proposal. In addition, the United States raised concerns with Mexico bilaterally at the March and November 2017 meetings of the WTO TBT Committee.

A final version of this measure was published on October 30, 2017. The final version included some positive changes, 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.

In 2017, the United States had \$202 million in domestic exports of alcoholic beverages to Mexico. U.S. exports were dominated by beer at \$148 million, followed by spirits at \$32 million, and wine at \$17 million. The United States also exported \$6 million in "other alcoholic beverages."

The United States will continue to monitor implementation of NOM 199 and engage with Mexico on any other proposed measures related to conformity assessment procedures for alcohol 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 may be issued in 2018. 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 January 2017. On August 4, 2017, a Mexican court issued another ruling to prohibit imports of U.S. potatoes beyond the 26 kilometer border zone. 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.

Raw Milk

Since May 2012, when Mexico determined that the Hoja de Requisitos Zoonosarios (HRZ) veterinary import requirements were not applicable to raw milk, U.S. dairy exporters have been unable to ship raw milk for pasteurization to Mexico. Raw milk for pasteurization represents a substantial export opportunity for several dairy producers who can supply this product to Mexican milk pasteurization plants when the plants are faced with insufficient domestic supplies of raw milk. In 2017, the United States continued to hold discussions with Mexico on Mexico's veterinary import requirements for raw milk intended for pasteurization.

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 PRA, which could allow importation from this region without 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.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the NAFTA, Mexico eliminated all remaining tariffs on industrial products and most agricultural products imported from the United States on January 1, 2003. On January 1, 2008, Mexico eliminated the remaining tariffs and tariff-rate quotas on U.S. agricultural exports.

Administrative Procedures and Customs Practices

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 the *Servicio de Administracion Tributaria* (SAT) to resolve audit cases in a timely and transparent manner.

On December 5, 2013, Mexico issued rules requiring importers to obtain a license before certain steel products may be shipped into Mexico; these rules were revised on August 11, 2014. Mexico's stated objectives of the import licensing system are 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, U.S. steel exporters and their Mexican customers have encountered disruptions in supply chains and additional shipment or demurrage costs, as shipments may not enter Mexico until licenses are issued. The U.S. Government is actively engaged with Mexico to address stakeholder concerns and to reduce or eliminate the burdens of this 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. The volume of U.S. exports of steel mill products to Mexico during 2017 was 3.8 million metric tons, a 16 percent decrease by volume over 2016. The value of U.S. exports to Mexico in 2017 was \$3.6 billion, a 12 percent decrease by value compared to 2016.

Mexico applies several new regulations governing the importation of footwear and 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 were 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. 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 SAT to clarify how requirements are applied.

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 on 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 2017, 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. Five cargo pre-inspection programs are currently operating, with seven more anticipated to begin in 2018.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Mexico was listed on the Watch List in the 2017 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, 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. Additionally, trademark owners and patent holders face lengthy civil judicial proceedings for infringement. In the 2017 Out-of-Cycle Review of Notorious Markets, the United States 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), Mexico is currently considering changes to its system of protection in the context of free trade agreement negotiations with the European Union. A fair and transparent GI system is paramount for U.S. producers.

The United States continues to work closely with Mexico to make progress in addressing other trade-related intellectual property issues, and these efforts have resulted in some progress. For example, in 2016 Mexico passed legislation establishing an opposition proceeding for trademark applications, a badly needed update to the trademark system.

SERVICES BARRIERS

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 2017 consumer prices fell 40 percent from levels in 2013, when the reform was enacted. The quality of service and carrier accountability also have improved. According to a poll undertaken by IFT in 2017, Mexico's mobile connection base reached 110 million, or 90 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 two years.

In August 2017, the Mexican Supreme Court determined that one aspect of the 2013-2014 reforms, a provision of the Telecommunications law that prohibited the dominant supplier from charging its competitors for interconnection, was unconstitutional because the IFT had sole authority to determine the rates that telecommunications suppliers charged for interconnection. In November 2017, IFT set the rate that America Movil, the dominant supplier, can charge its competitors for connecting calls to its network at nearly 3 Mexican cents per minute (approximately \$0.0014) and that competitors can charge America Movil 11 Mexican cents (approximately \$0.0056) for calls to their networks. The new rates went into effect January 1, 2018. Though IFT contended the continuing asymmetry of the pricing protected the rights of new entrants, U.S. and foreign companies operating in Mexico expressed disappointment at the decision, which they characterized as a step backwards and contrary to the spirit of the telecommunications reform.

Some U.S. companies also have expressed concern that difficulties persist in the efficient deployment of the telecommunications infrastructure necessary to provide comprehensive and 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.

Broadcasting

Pay television, the primary outlet for foreign programmers, 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.

Televisa, a national broadcaster, had a 62.2 percent share of the pay television market in Mexico as of 2015, the most recent report available. The company underwent an investigation by IFT to determine whether it had substantial market power, *i.e.*, the ability to set prices and restrict supply, in the pay television market. In October 2015, IFT ruled that Televisa did not have substantial market power in pay television and therefore did not require the application of stronger regulations to the company.

For the national television broadcast market, two national broadcasters, Televisa and TV Azteca, controlled roughly 90 percent of the market as of 2015, the most recent report available. However, on March 10, 2015, Cadena Tres (owned by Grupo Imagen and now called Imagen Televisión) was announced

as the winner of an auction for one of two additional national broadcast networks tendered by the Mexican government to create more competition in the market. The second broadcast network, initially awarded to Group Radio Centro, was cancelled after the winning bidder failed to pay \$200 million by the deadline. In 2016, IFT launched a tender for 148 digital TV channel concessions in a bid to open up the market, provide greater coverage options, and drive competition. The winning bidders were announced in December 2017.

Foreign investment in the broadcasting sector was historically prohibited in Mexico, but the 2014 telecommunications reform allowed for foreign investment of up to 49 percent. Actual investment is capped at whatever percentage is permitted to 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.

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 annually by the Secretariat of Economy. Per regulations published in 2017, for on-land activities, exploration and evaluation work required 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 Ministry 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.

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; foreigners are limited to 49 percent investment in 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 \$887 million in 2017, a 2.7 percent decrease (\$25 million) over 2016. U.S. goods exports to Morocco were \$2.1 billion, up 9.5 percent (\$184 million) from the previous year. Corresponding U.S. imports from Morocco were \$1.2 billion, up 20.4 percent. Morocco was the United States' 58th largest goods export market in 2017.

U.S. exports of services to Morocco were an estimated \$569 million in 2016 (latest data available) and U.S. imports were \$625 million. Sales of services in Morocco by majority U.S.-owned affiliates were \$152 million in 2015 (latest data available), while sales of services in the United States by majority Morocco-owned firms were \$27 million.

U.S. foreign direct investment (FDI) in Morocco (stock) was \$288 million in 2016 (latest data available), a 19.1 percent decrease from 2015.

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 or are subject to other provisions, such as tariff-rate quotas (TRQs). Goods of 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Automobiles

In July 2016, the government issued a new implementation decree that allows for the importation of vehicles that meet the U.S. Federal Motor Vehicle Safety Standards. Previously, only vehicles 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. Barriers to automotive trade persist, however. Although issuance of the implementation decree should have enabled importers to clear customs using self-certification documents to demonstrate compliance with U.S. safety standards, 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

Morocco continues to be the only U.S. FTA partner not to allow imports of U.S. beef or poultry products, due to various animal health and food safety concerns. However, at an October 2017 meeting of the

Sanitary and Phytosanitary (SPS) and Agriculture Sub-committee of the USMFTA Joint Committee, Morocco announced the removal of its *bovine spongiform encephalopathy* (BSE)-related ban on U.S. beef. Morocco also committed to finalize export certificates for both U.S. beef and poultry products. Additionally, Morocco committed not to transition recently adopted threshold alerts for Deoxynivalenol (DON) levels in wheat, which were set at levels stricter than Codex Alimentarius recommendations, to even stricter import tolerances.

IMPORT POLICIES

Morocco has undertaken reforms to liberalize its economy as a 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 new commitments reflecting practices developed since the USMFTA was signed in 2004 that facilitate the movement of goods. It includes provisions on Internet publication of customs regulations and procedures, automation, transit, transparency with respect to customs penalties, and other initiatives that will improve Morocco's environment for trade in goods.

Agriculture

Pursuant to the USMFTA, Morocco maintains a number of TRQs, including for U.S. durum and common wheat exports. At the October 2017 SPS and Agriculture Sub-Committee meeting of the USMFTA Joint Committee, Morocco committed to ensure that quota tenders are delivered from January through May, and no later than September through December, 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. Following this meeting, the government of Morocco reissued the remaining 2017 tender, and as a result, the 2017 common wheat tender was fully allocated.

Also at the October SPS and Agriculture Sub-Committee, Morocco committed to honoring its commitments 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.

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 not a signatory to the WTO Agreement on Government Procurement (GPA), but it is an observer of the GPA.

SERVICES BARRIERS

Morocco's insurance regulation formally treats foreign and Moroccan companies the same. However, 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

Despite Morocco's efforts to enforce against counterfeit goods, serious intellectual property rights (IPR)-related concerns remain, including with respect to piracy and counterfeit goods, such as the use of unlicensed software. In 2017, the United States and Morocco engaged extensively on the protection of geographical indications (GIs) in light of the Morocco-EU agreement on the protection of GIs concluded in January 2015. The United States continues to be very concerned with the potential impact of this agreement and looks forward to working with Morocco as it develops a GI system that is fair and transparent for U.S. exporters, does not block the use of common food names, and respects trademark rights.

Morocco proposed altering Pharmaceutical Law 17-04, which require companies to disclose their data on non-generic products to local manufacturing facilities in order to maintain their market authorizations. U.S. companies have stated their concern with possible changes in the implementation of this law. The United States continues to monitor the situation closely.

EXPORT RESTRICTIONS

U.S. industry has raised concerns over limitations placed by the Moroccan government on exports of Gigartina seaweed, used for food processing and other industrial applications. The Ministry of Agriculture and Maritime Fisheries issued an order on July 25, 2014, 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 drop of 900 metric tons from pre-2014 export levels). Both harvesting and exports are limited to the same quantities, but 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 2017 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 never provided a scientific justification for the quota.

OTHER BARRIERS

U.S. firms cite irregularities in government procedures as among the greatest obstacles to trade and investment in Morocco. In particular, firms point to a lack of efficiency and transparency in customs procedures, as well as in processes for obtaining permits, land use approvals, and other government permissions. In particular, U.S. companies have flagged Morocco's approach to customs valuation and Morocco's requirement of a certificate of non-manipulation for transshipped goods as impediments to their shipments. Companies also note the challenges created by the need to follow rigid protocols and navigate excessive bureaucracy, which leads 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 prepayments of imported orders are often problematic for those U.S. exporters who 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.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was \$231 million in 2017, a 51.2 percent decrease (\$242 million) over 2016. U.S. goods exports to New Zealand were \$3.9 billion, up 9.8 percent (\$350 million) from the previous year. Corresponding U.S. imports from New Zealand were \$4.2 billion, up 2.7 percent. New Zealand was the United States' 48th largest goods export market in 2017.

U.S. exports of services to New Zealand were an estimated \$2.5 billion in 2016 (latest data available) and U.S. imports were \$2.2 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were \$4.2 billion in 2015 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were \$456 million.

U.S. foreign direct investment (FDI) in New Zealand (stock) was \$8.4 billion in 2016 (latest data available), a 6.3 percent increase from 2015. U.S. direct investment in New Zealand is led by finance/insurance, manufacturing, and nonbank holding companies.

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). It is also a participant in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Regional Comprehensive Economic Partnership trade negotiations, and the Pacific Agreement on Closer Economic Relations (PACER Plus) negotiations among Pacific Island nations. New Zealand is currently negotiating a free trade agreement with the Pacific Alliance countries (Chile, Colombia, Mexico, and Peru) and has announced the upcoming launch of FTA negotiations with the European Union.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. At 2 percent, New Zealand has one of the lowest average MFN applied tariff rates among industrialized countries. In the WTO, New Zealand applies zero duty on 49.6 percent of its tariff lines in agricultural goods, and it applies zero duty on 67.2 percent of its tariff lines in industrial goods.

GOVERNMENT PROCUREMENT

New Zealand acceded to the WTO Agreement on Government Procurement (GPA) in 2015. Through the GPA, New Zealand has committed to open its covered government procurement to U.S. suppliers and suppliers from other GPA members, and to follow procedures designed to ensure transparency and fairness in procurement.

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. The United States continues to

monitor IP-related legislation in New Zealand, including related to implementation of international obligations, and to work with New Zealand to address IP issues.

INVESTMENT BARRIERS

Investment Screening

The New Zealand Overseas Investment Office 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 New Zealand Overseas Investment Office 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 New Zealand Overseas Investment Office 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. In November 2017, the newly installed Government tightened criteria for investment in rural land, saying that screening will now also be required for investment in rural land of five hectares or more; the government also moved to amend the Overseas Investment Act to expand the definition of “sensitive land” to include existing residential real estate. 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).

OTHER BARRIERS

Pharmaceuticals

The Pharmaceutical Management Agency (PHARMAC), created in 1993, 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 \$1.7 billion in 2017, a 7.4 percent decrease (\$134 million) over 2016. U.S. goods exports to Nicaragua were \$1.6 billion, up 7.0 percent (\$104 million) from the previous year. Corresponding U.S. imports from Nicaragua were \$3.3 billion, down 0.9 percent. Nicaragua was the United States' 65th largest goods export market in 2017.

U.S. exports of services to Nicaragua were an estimated \$443 million in 2016 (latest data available) and U.S. imports were \$631 million. Sales of services in Nicaragua by majority U.S.-owned affiliates were \$315 million in 2015 (latest data available), while sales of services in the United States by majority Nicaragua-owned firms were \$52 million.

U.S. foreign direct investment (FDI) in Nicaragua (stock) was \$117 million in 2016 (latest data available), a 36.4 percent decrease from 2015.

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, as well as 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Importation of goods can be delayed due to Nicaragua's labeling requirements, which require product descriptions in Spanish. Translation errors and inaccurate product descriptions can add to delays in getting goods through the customs process. Food product registration can also be complicated and arbitrary. The Ministry of Health requires a Certificate of Free Sale issued by the U.S. Department of Agriculture for products imported from the United States. However, the government of Nicaragua has not yet identified which document, if any, may be acceptable for such purposes.

Concerns have been raised with 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).

Sanitary and Phytosanitary Barriers

Nicaragua is implementing the 2011 Central American Technical Regulation on sanitary and phytosanitary (SPS) Measures and Procedures (COMIECO Resolution 271-2011), which requires the inspection by Nicaraguan authorities of U.S. packing plants that are first time exporters of non-processed products that have high sanitary risks, as determined by the government of Nicaragua. This import requirement was not notified to the WTO by any of the Central American countries, including Nicaragua. U.S. exporters have complained that this import requirement significantly increases trade costs since the exporters must incur all costs associated with plant inspections, including the travel expenses of Nicaraguan technicians to the United States. To date, this regulation has only affected U.S. seafood exports, which have been determined by the government of Nicaragua to be high sanitary risk. However, it has potential to affect other non-processed food products.

The Nicaraguan Institute of Agricultural Protection and Safety (IPSA) issues import licenses for agricultural imports. In some cases, IPSA has requested import licenses and sanitary permits for non-agricultural products. To mitigate uncertainty associated with this process, the United States has requested clarification on the Nicaraguan import requirements for agricultural products and the criteria for the issuance of import licenses.

Nicaragua has implemented SPS measures that are not based on science. In May 2016, IPSA rejected U.S. chicken meat, citing the 2009 Central American Technical Regulation on Microbiological Criteria for Food Safety (RTCA 67.04.50:08), which requires the complete absence of salmonella in raw poultry. Nicaragua had previously implemented this regulation through a 2013 Technical Norm for Raw Chicken Ready to Cook, NTON 03-023-12, which includes salmonella standards similar to the ones suggested by international food safety organizations. In response to U.S. inquiries, the Nicaraguan government clarified in January 2017 that they would apply the 2013 Norm, although the 2009 Central American standard remains in place. In 2017, Nicaraguan authorities detained, fumigated, and then rejected several containers without conducting proper laboratory procedures, citing quarantined pests.

IMPORT POLICIES

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 2018.

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, promoting new opportunities 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. 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, which the United States is carefully tracking to ensure Nicaraguan issuance of these permits occurs in a timely manner.

Nontariff Measures

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 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. However, companies report that difficulties with the Nicaraguan Customs Administration, including delays, arbitrary valuation of goods, technical difficulties, and corruption, are significant impediments to trade. U.S. exporters and Nicaraguan importers of U.S. goods have also raised concerns about the tariff classification of their goods by the Nicaraguan Customs Administration and the lack of transparency in customs release procedures.

There are also 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 Managua, meaning importers often experience delays and additional costs if goods have to be stored in Managua while testing is completed.

The Nicaraguan government levies a “selective consumption tax” of 15–42 percent on some luxury items, with a few exceptions such as yachts and helicopters, for which the tax is zero. 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.

Nicaraguan imports of U.S. rice, milled and rough, have declined by almost 100 percent since 2012. Because of an exception for *force majeure* or unforeseen circumstances, large importers retain their historical importer status when they fail to import the required minimum of 90 percent of their TRQ allocation. The claim for this exception is due by the last day of November for that TRQ year. This situation results in the crowding out of smaller importers, preventing them from obtaining minimally viable quantities and in some cases resulting in unused TRQ.

Law 891 (2014) prohibits the importation of vehicles that are seven years or older and came into effect in 2015. 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.

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.

The government has established a portal for public contracts, *NicaraguaCompra.gob.ni*, for firms to obtain information and bid on public contracts. This portal is not always updated in a timely fashion, however. Law 935 (2016) requires competitive and transparent bidding procedures for all public-private initiatives.

In practice, however, there are significant hurdles that inhibit participation by U.S. suppliers. 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 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 not a signatory to the WTO Agreement on Government Procurement.

EXPORT 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 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger 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

The government of Nicaragua is actively seeking to increase economic growth by supporting and promoting foreign investment. Weak governmental institutions, deficiencies in the rule of law, and extensive executive control can create significant challenges for those doing business 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, and has raised concerns to the government of Nicaragua about the infringement of private property rights affecting U.S. citizens. The United States continues to press the Nicaraguan government to resolve all outstanding expropriation claims and improve the investment climate.

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 also continue to monitor the situation to ensure that the Nicaraguan government fulfills its CAFTA-DR obligations.

OTHER BARRIERS

Some U.S. firms and citizens report corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision-making at times appear to be inconsistent, nontransparent, and very time-consuming. Courts have frequently granted 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, which can interfere with normal business operations.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was \$4.9 billion in 2017, a 114.6 percent increase (\$2.6 billion) over 2016. U.S. goods exports to Nigeria were \$2.2 billion, up 13.7 percent (\$260 million) from the previous year. Corresponding U.S. imports from Nigeria were \$7.1 billion, up 68.8 percent. Nigeria was the United States' 57th largest goods export market in 2017.

U.S. exports of services to Nigeria were an estimated \$2.5 billion in 2016 (latest data available) and U.S. imports were \$411 million. Sales of services in Nigeria by majority U.S.-owned affiliates were \$1.2 billion in 2015 (latest data available), while sales of services in the United States by majority Nigeria-owned firms were \$2 million.

U.S. foreign direct investment (FDI) in Nigeria (stock) was \$3.8 billion in 2016 (latest data available), a 16.2 percent decrease from 2015. U.S. direct investment in Nigeria is led by mining, manufacturing, and professional, scientific, and technical services.

SANITARY AND PHYTOSANITARY BARRIERS

Meat and Meat Products

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 and have led to smuggling of at least some of these items, most notably frozen chicken.

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.

IMPORT POLICIES

Tariffs

Consistent with the Common External Tariff (CET) of the Economic Community of West African States (ECOWAS), Nigeria applies five tariff bands: zero duty on essential social goods (*e.g.*, medicine); 5 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 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 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; 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. In August 2015, a U.S. company announced that it would begin assembly in Nigeria of its most popular model, from semi-knocked down kits sourced from South Africa, in order to take advantage of this allowance. However, in October 2016, the U.S. company suspended importation of the kits because of the difficulty in securing foreign exchange, though limited production had resumed by late 2017.

Customs Procedures

Nigerian port 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 to implement access road improvement projects, for now traders continue to report that infrastructural limitations in and around Nigeria's ports continue to contribute to long queues by both trucks and ships, resulting in delays and increased costs. (*See Other Barriers Section below for more information*).

Nigeria has ratified the WTO Trade Facilitation Agreement and identified Category A commitments as well as indicative dates for implementation of Categories B and C.

Nontariff Measures

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.

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, impacted 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 (HS) headings 3003 and 3004; soaps and detergents; mosquito repellent 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.

SERVICES BARRIERS

Telecommunications

In 2013, the National Information Technology Development Agency (NITDA), under the auspices 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 communication 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 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 ICT 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.

GOVERNMENT PROCUREMENT

Nigeria is neither a signatory to nor an observer of the WTO Agreement on 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 at the current exchange rate). 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.

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 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2017, Nigeria continued to address intellectual property rights (IPR) violations, including conducting 80 surveillance operations and 26 anti-piracy operations, which resulted in the arrest of 48 suspected infringers and the seizure of approximately \$3.4 million worth of pirated materials in the first two quarters of the calendar year. Further, in October 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, enforcement remains weak in Nigeria as pirated and counterfeit goods remain widely available, often threatening the health and safety of consumers. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly. Relevant Nigerian government institutions' lack of sufficient resources and interagency cooperation to enforce IPR continues to present challenges.

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. Although 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, the country's overall ranking remains low, at 145th of 190 countries.

The foreign exchange restrictions (*described in the Nontariff Measures section above*) have negatively impacted investment as well as trade. The measures have hampered some U.S. companies' ability 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.

BARRIERS TO DIGITAL TRADE

The Guidelines for Nigerian Content Development in Information and Communications Technology (The Guidelines) contain provisions that serve as barriers to trade in digital products and services.

Data Localization

The Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens in Nigeria. The Guidelines also require that businesses host all government data locally unless officially exempted. These requirements constitute *de facto* discrimination against 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. Though enforcement of the Guidelines to date has been almost non-existent, the periodic threat of repercussions for non-compliance is troubling.

Internet Services

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 concern is exacerbated by the 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.”

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. Due to 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. 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 cancellation 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. U.S. firms are frequently disadvantaged in competing with companies that are willing to engage in corruption to secure contracts and other business opportunities. U.S. firms also experience difficulties in day-to-day operations due to inappropriate demands from officials for “facilitative” payments. President Buhari, who was inaugurated in May 2015, has made countering Nigeria’s endemic corruption a centerpiece of his administration. Efforts to strengthen anticorruption measures have, however, been hampered by inter-ministry infighting and partisan politics, including a delay 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 deficit of \$484 million in 2016 to a goods trade surplus of \$269 million in 2017. U.S. goods exports to Norway were \$5.3 billion, up 35.0 percent (\$1.4 billion) from the previous year. Corresponding U.S. imports from Norway were \$5.0 billion, up 14.1 percent. Norway was the United States' 39th largest goods export market in 2017.

U.S. exports of services to Norway were an estimated \$3.1 billion in 2016 (latest data available) and U.S. imports were \$2.7 billion. Sales of services in Norway by majority U.S.-owned affiliates were \$6.4 billion in 2015 (latest data available), while sales of services in the United States by majority Norway-owned firms were \$2.6 billion.

U.S. foreign direct investment (FDI) in Norway (stock) was \$32.3 billion in 2016 (latest data available), a 7.0 percent decrease from 2015. U.S. direct investment in Norway is led by mining, manufacturing, and information.

SANITARY AND PHYTOSANITARY BARRIERS

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 European Union 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.

IMPORT POLICIES

Norway, along with Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the 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.

Except for agricultural products, Norway's market is generally open. Norway has continued to dismantle tariffs on industrial products on a unilateral basis. The average most favored nation tariff on nonagricultural products fell from 2.3 percent in 2000 to 0.5 percent in 2013. More than 95 percent of industrial tariff lines are currently duty free.

Agricultural Tariffs and Tariff-Rate Quotas

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 2015 Norway's simple average applied tariff was 51.2 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 sweets, ice cream, pasta, pizza, soups, and sauces. Such preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

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 products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult to import. 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 Subsidies

Although agriculture accounts for only 0.5 percent of gross domestic product, support provided by Norway to its agricultural producers as a percentage of total farm receipts was 60 percent between 2014 and 2016, 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.

Raw Material Price Compensation

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, sweets, ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically produced raw materials.

Wines and Spirits

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 or they are dropped from

the basic inventory list. Existing wine suppliers benefit from exposure in Vinmonopolet stores, and the market situation for U.S. wines is exacerbated by the strict ban on advertising alcoholic beverages.

PHARMACEUTICALS

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals in Norway, including the lack of detailed information on how winning bidders are selected, the lack of adequate time for participation, and the lack of protection for confidential information that prejudices fair competition.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Although recent legislative developments, enforcement actions, and the increased availability of legal alternatives for obtaining copyrighted works 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. Rights holders also are concerned that a general extended collective license for audiovisual works may be implemented in a manner that undermines the ability for rights holders to exercise their exclusive rights individually. The Parliament did not adopt the Ministry of Culture's proposal for an amended Copyright Act in 2017. Industries and rights holder organizations continue to identify areas where the Copyright Act could be strengthened and modernized to better recognize the contributions of the audiovisual and music industries and other rights holders.

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 \$1.0 billion in 2017, a 51.3 percent increase (\$348 million) over 2016. U.S. goods exports to Oman were \$2.1 billion, up 16.2 percent (\$292 million) from the previous year. Corresponding U.S. imports from Oman were \$1.1 billion, down 5.0 percent. Oman was the United States' 59th largest goods export market in 2017.

U.S. exports of services to Oman were an estimated \$469 million in 2016 (latest data available) and U.S. imports were \$315 million. Sales of services in Oman by majority U.S.-owned affiliates were \$446 million in 2015 (latest data available), while sales of services in the United States by majority Oman-owned firms were \$0 million.

U.S. foreign direct investment (FDI) in Oman (stock) was \$1.2 billion in 2015 (latest data available).

FREE TRADE AGREEMENTS

The United States-Oman Free Trade Agreement

Under the United States-Oman Free Trade Agreement (FTA), Oman provides immediate duty-free access on virtually all industrial and consumer products. Duties on other products are phased out gradually over the first ten years of the Agreement. Textiles and apparel made from either U.S. or Omani yarn and fabric are duty-free, providing opportunities for U.S. and Omani fiber, yarn, fabric and apparel manufacturing. The FTA also provided a 10 year transitional period for preferential tariff treatment for certain quantities of textiles and apparel that did not meet otherwise applicable requirements in order to assist U.S. and Omani producers in developing and expanding business contacts. This provision will expire on December 31, 2018. Oman will phase out tariffs on the remaining handful of products by December 31, 2018.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 where Member States require duplicative and discordant registration procedures for relatively low-risk cosmetic and personal care products. The U.S. Government and industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a "GCC Guide for Control on Imported Foods" in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC's failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

U.S. agricultural stakeholders have also raised concerns regarding recent import requirements in Oman involving certification for pesticide residues as well as radiation attestations for agricultural products.

IMPORT POLICIES

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, alcohol, pork, and tobacco products, implementation varies by Member State. U.S. beverage producers report 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.

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.

Import Licenses

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.

Customs

Companies importing U.S. goods periodically report difficulties in receiving preferential tariff treatment under the FTA for goods that enter Oman by land from the United Arab Emirates. Companies also report inconsistent application of requirements by the Royal Oman Police Customs Directorate (ROP Customs) for origin marking, and a lack of published official guidance documentation that clearly outlines the procedures and information necessary in these areas.

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. Although Oman provides a 10 percent price preference for tenders that contain a high content of domestic goods or services, including direct employment of Omani nationals, such preferences are not applied 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 tender costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines.

Oman is an observer of the WTO Agreement on Government Procurement (GPA). In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO GPA 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, and it acceded to several international IPR treaties. In July 2017, Oman adopted the GCC Trademark Law, which expanded the definition of a trademark, allows multiclass applications, and harmonized the examination process.

While IPR laws in Oman are strong, U.S. stakeholders have experienced difficulty getting appropriate agencies, including the Public Authority for Consumer Protection, the Public Prosecution, the Ministry of Commerce and Industry, and the Royal Oman Police, to take enforcement action. Adding to the lack of efficiency in IPR enforcement is continued confusion as to which government agencies are responsible for investigating different types of IPR violations. The Ministry of Commerce and Industry has identified members of an IPR enforcement team, but is awaiting approval from the Ministry of Justice for further action.

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

SERVICES BARRIERS

Legal 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.

INVESTMENT 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.

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, restrictive rules apply to investors seeking to acquire real estate for commercial purposes. With the exception of certain tourism-related property arrangements, 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 \$765 million in 2017, a 42.7 percent decrease (\$571 million) over 2016. U.S. goods exports to Pakistan were \$2.8 billion, up 33.3 percent (\$702 million) from the previous year. Corresponding U.S. imports from Pakistan were \$3.6 billion, up 3.8 percent. Pakistan was the United States' 53rd largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Pakistan (stock) was \$409 million in 2016 (latest data available), a 2.8 percent increase from 2015.

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 that 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

Live Cattle, Beef, and Beef Products

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 had received a negligible risk status for BSE in accordance with World Animal Health Organization (OIE) guidelines. On March 2, 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, representing the first shipment since 1999. Despite permitting the importation of live cattle, Pakistan has banned the importation of U.S. beef and beef products, ostensibly over concerns of BSE. The United States has been working closely with the Ministry of Commerce and the Ministry of Food Security to resolve concerns pertaining to the importation of 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 the resolution.

IMPORT POLICIES

Tariffs

In its FY2017 budget, Pakistan reduced the number of tariff categories from five to four, and reduced maximum tariff rates from 25 percent to 20 percent. The new general tariff categories are 3 percent, 11 percent, 16 percent, and 20 percent. These rates are calculated on the weighted average basis of all of the tariffs applied to the items included in that specific tariff category. Some individual tariff rates may be higher than the rates listed.

Pakistan's average applied MFN tariff rate is 14.3 percent, while its average WTO bound rate is 60 percent.

Despite recent tariff liberalization (reduction in tariff categories and tariff rates in the last three years), Pakistan continues to protect several key local industries by imposing high tariff rates. The automobile industry, for example, is one of the country's most protected sectors. 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. The policy offers tax incentives to new entrants, 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 100 vehicles of the same variants, in the form of completely built units, at 50 percent of the prevailing duty, for test marketing after establishing the production facility; 3) 10 percent reduction in customs duty for new investors on local production parts for five years (versus the prevailing 32.5 percent); and 4) for five years, importation of localized parts by new entrants at 25 percent duty (versus the 50 percent duty for current assemblers and manufacturers).

Pakistan also grants sector- and product-specific duty exemptions, and concessions, 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: <http://www.fbr.gov.pk>. Cotton yarn, construction material, furnace oil, and steel were the main items subject to SROs in FY2017.

Pakistan previously pledged to eliminate the use of SROs through an International Monetary Fund (IMF) program that Pakistan completed in September 2016. However, many SROs remain, and Pakistan has not provided a concrete timeline for their removal. Pakistan did remove the FBR's authority to issue new SROs and transferred it to the Economic Coordination Committee, a cabinet-level body in the Prime Minister's office.

The most recent SRO, issued in October 2017, imposed an additional regulatory duty, beyond the applied tariff, on the import of 731 items and was intended to slow import growth. While the focus of this SRO was intended to be "luxury goods" and consumables, and the overall impact on U.S. exporters was limited, a number of companies have raised concerns about revenue duty increases on inputs that would raise production costs and the price of finished goods manufactured in Pakistan.

Pakistan also sought to protect key agriculture sectors (wheat, sugar) through the imposition of regulatory duties announced in the latest SROs.

U.S. importers have raised concerns about two earlier SROs (420 and 575) 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 explained that the tax on domestically produced products will be increased to 17 percent, but no timeline has been set.

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 used 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 effectively limit the supply of products into the country.

Customs Procedures

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 duties based on a set of minimum values rather than the declared transaction value.

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 requires that the liability of placing such documents be vested with the owner of the goods, as well as 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 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 discretion as to whether to impose penalties, keeping in mind peculiarities of companies' invoicing systems, but at least one U.S. firm has been fined as a result of these rules.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement, but has obtained observer status. The Public Procurement Regulatory Authority is an autonomous body responsible for promulgating 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 documented "buy national" policies in Pakistan. However, political influence on procurement awards, charges of official corruption, lack of transparency, judicial intervention, and long delays in bureaucratic decision-making are commonly cited as impediments to government procurement. Recently, Pakistan has begun to rely more on technical qualifications in its procurements, though U.S. suppliers continue to report instances in which the procuring agency uses the U.S. bid as a basis for further negotiations with other competitors (often Chinese), rather than accepting the lowest priced and technically superior bid as outlined in bidding guidelines.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Pakistan remained on the Special 301 Watch List in 2017. 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, the establishment of IPR Tribunals, public awareness campaigns on IPR protection, and ongoing engagement with stakeholders.

The government of Pakistan is in the process of reviving its biotechnology regulatory system. The Plant Breeders' Rights Act, which establishes intellectual property protection for seeds, was approved by Parliament on December 2, 2016. Once the implementing rules are notified, the Act will establish intellectual property protection for foreign and domestic seeds. While progress is being made, the lack of an effective regulatory system certainly has dampened innovation in this sector and discouraged foreign, domestic, and government organizations from introducing new technologies that would boost yields and improve farmer livelihoods.

Despite these improvements, the 2017 Special 301 report notes that 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 copyright, customs enforcement, and protection against the unfair commercial use and disclosure of test and other data generated to obtain marketing approval for pharmaceutical products. The U.S. Government, coordinated by the Commercial Law Development Program (CLDP), continued to provide technical capacity assistance in these areas in 2017, e.g., providing extensive comments and consulting on legislation.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services without equity caps, except in certain sectors such as aviation, banking, agriculture, and media. 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 five percent of net sales for the next five years.

Financial Services

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. Foreign ownership in the banking sector is limited to 49 percent. 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 reinsurance needs; the remainder of reinsurance must be ceded locally.

BARRIERS TO DIGITAL TRADE

Pakistan periodically blocks access to websites for hosting content deemed to be blasphemous or immoral. These blockages sometimes suspend access to a website for the whole country in response to a single piece of offending content. 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 websites to their customers, and impose costs on local firms that depend on these services for their own business.

OTHER BARRIERS

Corruption and a weak judicial system have been cited as substantial disincentives to foreign investment in Pakistan; although Pakistan's Supreme Court directed the National Assembly in 2009 to pass new legislation to update the ordinance establishing the country's federal anticorruption agency (the National Accountability Bureau), the National Assembly has yet to pass such legislation.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. Parties pursuing legal remedies in Pakistan's 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.

Pakistan, while utilizing an Extended Fund Facility, was under significant pressure from the IMF to increase tax revenue. Unable to significantly broaden the country's tax base, which actually declined from 2016 to

2017, the government leaned on large companies, especially international firms, to increase revenues. Since 2015, U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities. When tax liabilities are less than the tax prepaid by a company, refunds are notoriously difficult to receive from the FBR. Although small and medium-sized U.S. companies have not seen their tax burden increase substantially, 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 the U.S. Government continues to reinforce the importance of Pakistan broadening its tax base.

Pakistani laws allow 100 percent repatriation of profits, although there have been reports of U.S. and other companies facing bureaucratic hurdles in repatriating profits and assets from Pakistan, generally coinciding with the government's focus on maintaining foreign currency reserves. One U.S. firm 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. Pakistan's 18th Amendment to its 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.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$6.0 billion in 2017, a 5.0 percent increase (\$287 million) over 2016. U.S. goods exports to Panama were \$6.4 billion, up 5.2 percent (\$319 million) from the previous year. Corresponding U.S. imports from Panama were \$442 million, up 7.8 percent. Panama was the United States' 37th largest goods export market in 2017.

U.S. exports of services to Panama were an estimated \$1.5 billion in 2016 (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 2015 (latest data available), while sales of services in the United States by majority Panama-owned firms were \$91 million.

U.S. foreign direct investment (FDI) in Panama (stock) was \$4.4 billion in 2016 (latest data available), a 16.7 percent increase from 2015. U.S. direct investment in Panama is led by nonbank holding companies, finance/insurance, and wholesale trade.

TRADE AGREEMENTS

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.

SANITARY AND PHYTOSANITARY BARRIERS

In 2006, at the time of the negotiations of the TPA, the parties also signed an agreement regarding “Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products. That agreement entered into force on December 20, 2006.

The Panamanian Food Safety Authority (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. AUPSA does not have regulatory authority on domestic products in Panama. In the last three years, AUPSA, as well as other parts of the government, has implemented or proposed measures that appear to be aimed at restricting market access, as well as to increase AUPSA’s ability to limit the import of certain agricultural goods. For example, Resolution AUPSA – Dirección Nacional de Normas (DINAN) – 055 - 2016 states that foods for personal consumption by an individual entering Panama using postal or courier delivery services (private or public) shall not exceed three imports in a one year period. The United States is monitoring these activities and urging Panama to avoid unnecessary restrictions on trade.

On October 16, 2017, the National Assembly’s Commission for Agricultural Affairs initiated a debate on draft Bill 577 of 2017, which would assign to AUPSA additional functions that appear problematic. Panamanian President Varela partially vetoed two similar draft bills, first in May 2015 and again on April 25, 2017, due to concerns about whether they would unduly restrict trade and market access. The previously vetoed provisions from 2015 and earlier in 2017 were recycled in the October 2017 bill because of pressure from local producers. The draft measures include changes to AUPSA’s decision-making structure to allow

for industry input on import rules and regulations, moving AUPSA away from being a science-based authority. The United States will continue to monitor developments on the bill and engage with Panama.

IMPORT POLICIES

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 seventh round of tariff reductions took place on January 1, 2018. 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 will be phased out over the course of 10 years. 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 risen as quotas have increased and over-quota duties have phased out over the course of the applicable implementation period.

Panama's average MFN tariff on industrial and consumer goods is relatively low, at about 7.6 percent, although tariffs on some products are as high as 81 percent. Panama's average MFN tariff on agricultural goods is 12.2 percent, but some agricultural imports face tariffs as high as 260 percent. However, the TPA rates are applied to U.S. products meeting the TPA's rules of origin.

Nontariff Measures

In addition to tariffs, 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.

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.

GOVERNMENT PROCUREMENT

In December 2015, Panamanian government officials indicated that, in an effort to increase participation by U.S. and other international companies, Panama was examining how to improve the delivery method for information on public tenders. This would include improving the Panama Compra online portal and increasing the lead times to announce upcoming major tenders. The reviews are still ongoing, and the United States continues to monitor developments.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The protection and enforcement of Intellectual Property (IP) in Panama is the responsibility of an 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) under the leadership of the Ministry of Commerce and Industry. CIPI coordinates enforcement actions and holds seminars to improve public awareness and compliance with IP laws.

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. While challenges remain, *e.g.*, in the areas of trademarks (opposition proceedings), 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.

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. 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 established by the law have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes.

OTHER BARRIERS

Corruption

President Juan Carlos Varela, inaugurated on July 1, 2014, has pledged to pursue reports of corruption, for example, by increasing transparency in tendering for government procurement and ensuring that government tenders are awarded transparently and fairly. The Varela Administration also has pursued legal cases against former government officials for embezzlement and misappropriation. Following the release of the "Panama Papers" in May 2016, President Varela installed 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.

While Panama has domestic anticorruption mechanisms, such as asset forfeiture, protection for witnesses and whistleblowers, and conflict-of-interest rules, the general perception is that anticorruption laws could be applied more rigorously, and that government enforcement bodies and the courts could do more to pursue and prosecute those accused of corruption, particularly in high profile cases. 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 also a perception that Panama could do more to implement the conventions and respond to official recommendations.

Concerns remain regarding the competence and independence of the judicial system, based on decisions that call into question its ability to carry out justice. 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 \$2.6 billion in 2017, a 44.7 percent increase (\$813 million) over 2016. U.S. goods exports to Paraguay were \$2.8 billion, up 40.1 percent (\$790 million) from the previous year. Corresponding U.S. imports from Paraguay were \$125 million, down 16.1 percent. Paraguay was the United States' 54th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Paraguay (stock) was \$159 million in 2016 (latest data available), a 15.2 percent increase from 2015.

IMPORT POLICIES

Tariffs

Paraguay is a founding member of the MERCOSUR common market, formed in 1991. MERCOSUR's full members are 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. Paraguay's average bound tariff rate in the WTO is significantly higher at 33.5 percent. Paraguay's applied import tariffs tend to be much lower than the CET, ranging from zero percent to 30 percent, with an average applied tariff rate of 9.8 percent in 2016. Under a July 16, 2015, MERCOSUR Common Market Council decision, Paraguay is permitted to maintain a list of 649 exceptions to the CET until December 31, 2019.

According to MERCOSUR procedures, any good imported into a 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 upon importation there. 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 Common Market Council (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 ratified the CCC.

The MERCOSUR Common Market Council 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. Thus far, only Argentina has ratified the CCC. The CCC is still pending approval by the Paraguayan Congress.

Nontariff Barriers

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 particularly in a landlocked country, and can cause importers to have to reapply for an import license and health certification.

Paraguay prohibits the importation of automobiles older than 10 years and used clothing. Also, seasonal restrictions on some agricultural products (*e.g.*, tomatoes, bell peppers, and onions) are sometimes implemented to protect local producers.

Customs Procedures

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.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the WTO Agreement on 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 on tenders deemed "international" and on "national" tenders 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, a portal created with the help of USAID.

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 solidifies bilateral cooperation in which the United States supports Paraguay's efforts to strengthen the legal protection and enforcement of IPR. The National Directorate of Intellectual Property continues to improve administrative activities, 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 level of enforcement against piracy and counterfeiting under the criminal code, particularly in Ciudad del Este (which has appeared on USTR's Notorious Markets List several times, including in the 2017 Notorious Markets List released in January 2018). Other concerns include judicial inefficiency and delays in IPR cases; 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; the reported use of unlicensed software by offices within the Paraguayan government; and the theft of pay TV 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 in recent years 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 \$1.4 billion in 2017, a 17.6 percent decrease (\$300 million) over 2016. U.S. goods exports to Peru were \$8.7 billion, up 9.2 percent (\$731 million) from the previous year. Corresponding U.S. imports from Peru were \$7.3 billion, up 16.5 percent. Peru was the United States' 30th largest goods export market in 2017.

U.S. exports of services to Peru were an estimated \$2.7 billion in 2016 (latest data available) and U.S. imports were \$1.6 billion. Sales of services in Peru by majority U.S.-owned affiliates were \$3.3 billion in 2015 (latest data available), while sales of services in the United States by majority Peru-owned firms were \$6 million.

U.S. foreign direct investment (FDI) in Peru (stock) was \$6.2 billion in 2016 (latest data available), a 7.7 percent increase from 2015. U.S. direct investment in Peru is led by mining, manufacturing, and wholesale trade.

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 some U.S. priorities, including progress in eliminating child and forced labor and the strengthening of forest sector oversight.

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, establishes a mandatory front-of-pack warning statement on food labels for pre-packaged foods and beverages that surpass an established threshold 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 concerns with Peru’s approach, which does not appear to provide consumers with information regarding the role of different types of foods, consumed in moderation, in an overall healthful and balanced diet. 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. These concerns include that Peru has not appeared to consider relevant international standards in preparing and adopting the measure, and has not considered less trade-restrictive alternatives to improving the quality of nutritional information provided to consumers.

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 2018, 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 2017. The United States also has raised its concerns in a number of discussions with business associations.

IMPORT POLICIES

Tariffs

According to the WTO, Peru's average bound WTO tariff rate was 29.5 percent in 2015, and its average MFN applied tariff rate was 2.4 percent. All duties for PTPA qualifying U.S. consumer and industrial goods exported to Peru have been eliminated, while a small number of remaining Peruvian tariffs apply only 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.

Non-Tariff Measures

Peru has eliminated many of its non-tariff 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.

A 30 percent excise tax applies to imports of used cars and trucks, which compares to only 6 percent for new vehicles. However, if used cars or trucks undergo refurbishment in an industrial center in the south of the country (that is, those located in Ilo, Matarani, or Tacna) after importation, the lower, new vehicle excise tax applies.

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 (3.40 PEN/liter or 25 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.

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. Although these decrees eliminate loopholes that previously enabled registration of products as biosimilars without clinical data, in competition with verified biologics and biosimilars, Peru's registration and marketing approval processes 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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Peru remained on the Watch List in the 2017 Special 301 Report.

Pirated and counterfeit goods, including counterfeit medicines, remain widely available in Peru. Piracy over the Internet is a growing problem, especially with respect to music, software, and video content including both movies and television programs. Rights holders report that Peru is a major source of

unauthorized “camcorded” films. Peru is also the home base to administrators of several Spanish-language websites that offer or facilitate the use or sale of pirated content and counterfeit goods. Other challenges to IPR protection include inadequate resources for law enforcement, lack of coordination among enforcement agencies, the need for improved border measures, and the need for more specialized prosecutors and judges.

The United States worked closely with Peru to coordinate a number of IPR enforcement efforts in 2017. In September, Peruvian prosecutors and members of the Peruvian National Police seized the domain for *pelis24.com*, a prolific pirate site, and arrested its administrators in Lima. The site infringed on more than 5,000 properties belonging to U.S. copyright holders and attracted more than 25 million monthly visitors from Latin America. Additionally, in November, members of the Peruvian National Police seized \$8 million worth of counterfeit clothing from the notorious Gamarra market.

The United States maintains an Intellectual Property Attaché in Peru and will continue its efforts to ensure implementation of Peru’s intellectual property obligations under the PTPA. These include providing for statutory damages and establishing limitations on liability for Internet service providers within the parameters of the PTPA.

GOVERNMENT PROCUREMENT

Peru is not a signatory of the WTO Agreement on Government Procurement, but as noted, the PTPA contains disciplines on 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. The United States will continue to engage with Peru to ensure that all PTPA covered procurements are conducted consistent with the Agreement’s obligations. Additionally, U.S. firms continue to identify corruption as a significant problem in the government procurement process in Peru.

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 inconsistent interpretation of rules by *La Superintendencia Nacional de Aduanas y de Administración Tributaria* (SUNAT), Peru’s customs and tax agency.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with Philippines was \$3.2 billion in 2017, a 71.3 percent increase (\$1.3 billion) over 2016. U.S. goods exports to Philippines were \$8.5 billion, up 3.3 percent (\$267 million) from the previous year. Corresponding U.S. imports from Philippines were \$11.6 billion, up 15.8 percent. Philippines was the United States' 31st largest goods export market in 2017.

U.S. exports of services to Philippines were an estimated \$2.6 billion in 2016 (latest data available) and U.S. imports were \$6.1 billion. Sales of services in Philippines by majority U.S.-owned affiliates were \$3.9 billion in 2015 (latest data available), while sales of services in the United States by majority Philippines-owned firms were \$47 million.

U.S. foreign direct investment (FDI) in Philippines (stock) was \$5.9 billion in 2016 (latest data available), a 9.4 percent increase from 2015. U.S. direct investment in Philippines is led by manufacturing, nonbank holding companies, and wholesale trade.

TRADE AGREEMENTS

The Philippines has preferential trade agreements with a range of trading partners under the Association of Southeast Asian Nations (ASEAN) including Australia, China, India, Korea, and New Zealand, which have eroded the competitiveness of U.S. products in the Philippines. The Philippines has eliminated tariffs on approximately 99 percent of all goods imported from ASEAN trading partners. The Philippines also has a free trade agreement with the European Free Trade Association countries, is negotiating an FTA with the European Union, and is participating in the 16-member Regional Comprehensive Economic Partnership negotiations. The Philippines has only one bilateral free trade agreement, the Japan-Philippines Economic Partnership Agreement.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Sanitary and Phytosanitary Barriers

Meat Handling Regulations

The Philippines maintains a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local “wet” markets. Under this system, the Philippines imposes more burdensome requirements on the sale of frozen meat, which is primarily imported, than it does on the sale of freshly slaughtered meat, which is only from animals raised domestically. The United States continues to press the Philippine government to remove unjustified requirements that treat frozen meat differently from fresh meat.

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 new permits has included a requirement that permits be signed by

the Secretary of Agriculture, or his or her Chief of Staff, introducing further delays in issuance. The United States continues to work with the Philippine government to ensure the process does not hamper trade.

Agricultural Biotechnology

In October 2016, the Philippines adopted 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 December 2015 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.

IMPORT POLICIES

Tariffs

The Philippines' simple average MFN applied tariff is 6.3 percent. All agricultural tariffs and 61.9 percent of non-agricultural tariff lines are bound under the Philippines' WTO commitments. The simple average bound tariff in the Philippines is 23.5 percent. Products with unbound tariffs include certain automobiles, chemicals, plastic, vegetable textile fiber, footwear, headgear, fish, and paper products. 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 tariff). Bound rates are much higher at 35 percent and 50 percent. Tariffs on fresh potatoes remain applied and bound 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 program, titled the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines imposes a tariff-rate quota on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products. In-quota tariffs range from 30 percent to 50 percent. Sugar has the highest in-quota tariff at 50 percent, followed by rice, coffee, poultry, and potatoes at 40 percent. The in-quota tariff for corn is 35 percent, while pork and raw coffee have in-quota tariffs of 30 percent. Since 2005, the Philippines has 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.

Quantitative Restrictions

The Philippines National Food Authority (NFA) controls rice imports through quantitative restrictions and provides price support to rice growers. 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 350,000 MT to 805,200 MT. 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, covering over \$66 million of U.S. agricultural exports to the Philippines.

The Philippines has not pursued an extension of its WTO waiver and has instead indicated that it intends to convert its rice quotas into tariffs. The Philippines Congress is now considering several bills to establish such tariffs for rice imports. In the meantime, the Philippines issued Executive Order 23 on May 22, 2017, which unilaterally extended tariff concessions (e.g., for cheese and mechanically separated meat). The concessions will remain in place until December 31, 2020, or until the Philippines enacts a law on tariffication of rice, whichever occurs first. The United States is urging the Philippines to make the tariff concessions permanent.

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 percent to 20 percent on vehicles for the transport of persons, depending on vehicle weight. New vehicle imports from ASEAN countries and Japan benefit from preferential tariffs under the ASEAN Free Trade Agreement and the Japan-Philippines Economic Partnership Agreement, respectively. 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 completely knocked-down kits imported by registered participants. Separately, the Philippines also prohibits the importation of used motor vehicles parts.

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 vehicles (PUV) modernization program.

Customs Barriers

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). Despite a firm commitment to the United States from the Bureau of Customs to use transaction values to assess duties on imports, as provided for in the WTO Customs Valuation Agreement, importers have reported that the Bureau of Customs continues to use reference prices for the valuation of meat and poultry. Traders have reported that reference prices are frequently well above the transaction prices, which has the effect of imposing an artificially high tariff. The United States continues to press the Philippines to resolve this issue, including most recently at TIFA meetings during 2017.

GOVERNMENT PROCUREMENT

Five different restrictions in Philippine laws dating back to the "Flag Act" of 1936 favor Philippine nationals or Filipino-controlled enterprises for procurement contracts. Some of them are denoted on the Foreign Investment Negative List (FINL). 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 not a signatory to nor an observer of the WTO Agreement on Government Procurement.

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 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; zero value-added tax (VAT) rate on local purchases, including telecommunications, electricity, water, and lease of building; and exemption from payment of local government fees (mayor's permit, business permit, health certificate, sanitary inspection, and garbage). Additionally, under the Export Development Act (Republic Act No. 7844), 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 increase in annual export revenues. A revenue increase of more than 15 percent is entitled to a 10-percent tax credit. However, this incentive is not available for exporters already receiving an income tax holiday or VAT exemption, or whose local VAT rate is below 10 percent.

The Philippines government also offers incentives to companies for investment in less-developed economic areas and in preferred sectors, as outlined in the Board of Investment's Investment Priorities Plan. The incentives include income tax holidays; tax deductions for wages and certain infrastructure investments; tax and duty exemptions for imported breeding stock and genetic materials; and tax credits on local purchases of breeding stock and materials. An enterprise with less than 60 percent Philippine equity may receive incentives if its projects are classified as "pioneer" under the Omnibus Investments Code. Pioneer status can be granted to Board of Investments-registered enterprises engaged in the production of new products or using new methods, producing goods deemed highly essential to the country's agricultural self-sufficiency program, or producing or utilizing non-conventional fuel sources. 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 also qualify for incentives under the Omnibus Investments Code.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

There have been improvements in the Philippine's intellectual property rights (IPR) environment in recent years. Nonetheless, U.S. rights holders report some concerns, including increasing online piracy, counterfeit drugs, and weak provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. They have expressed concerns about the continued availability of pirated and counterfeit goods in the Philippines, 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, including potential impacts on market access for U.S. products. The United States continues to engage bilaterally with the Philippines to address these concerns.

SERVICES BARRIERS

Telecommunications

Philippine regulators have defined telecommunications services as a public utility, which under 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. The United States has urged the Philippines to reclassify telecommunications outside of the utility definition, as it has done for electricity generation. Proposed priority legislation seeking to amend the Public Service Law by providing a stricter statutory definition of a “public utility” has passed in the Philippines House of Representatives and is pending in the Philippine Senate. The bill is considered likely to pass in 2018.

Insurance

The Philippines permits up to 100 percent foreign ownership in the insurance sector. 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 Philippine National Reinsurance Company 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 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.

Banking

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.

Audiovisual Services

The Philippine Constitution prohibits foreign ownership in mass media, including cable TV and broadcasting. Additionally, foreign equity in private radio communications is limited to 20 percent.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

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. To implement this constitutional provision, the Philippines has depended on 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 the proposed 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 professions to Philippine citizens. However, various laws and regulations provide for exceptions on the basis of reciprocity. Professional services subject to such exceptions include: medicine, pharmacy, nursing, dentistry, accountancy, architecture, engineering, criminology, teaching, chemistry, environmental planning, geology, forestry, interior design, landscape architecture, and customs brokerage. The practice of law, radiologic and x-ray technology, and criminology are still reserved to Philippine citizens.

Express Delivery Services

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Retail Trade

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.

INVESTMENT BARRIERS

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List (FINL) 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, small-scale mining) or subject to limitation (*e.g.*, natural resource extraction and construction or repair of locally funded public works). The current list was issued in May 2015. The Philippine Securities and Exchange Commission monitors corporations’ compliance with the foreign equity restrictions mandated under the FINL.

President Duterte issued Memorandum Order No. 16 on November 22, 2017, directing the National Economic and Development Authority and member agencies to “take immediate steps to lift or ease existing restrictions on foreign participation” in certain investment areas, including certain professional services, construction, retail trade enterprises, and domestic market enterprises.

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.

BARRIERS TO DIGITAL TRADE

Internet Services

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, Philippine regulators occasionally have required cloud computing and over-the-top service providers to obtain a value-added telecom services license; such licenses are only available to Filipino companies with no more than 40 percent foreign equity. Removing limitations on foreign participation in the information and communications technology sector has been a longstanding U.S. request, and given the importance of cloud computing to U.S. companies, the restrictions limit commercial opportunities for U.S. firms.

In recent years, the Philippines has established a restrictive regulatory framework for transportation providers working through mobile applications. In 2017, the Land Franchising and Regulatory Board (LFRB) prohibited service providers from activating new drivers on their platforms and making those drivers available to provide trips. Other regulations have put maximum limits on dynamic pricing and minimum limits on driver hours. Together, these restrictions limit the value that these services are able to provide to consumers, and undermine the competitiveness of these services *vis-a-vis* local alternatives.

OTHER BARRIERS

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. The United States will continue to urge the Philippines to address these issues.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was \$1.9 billion in 2017, a 49.1 percent decrease (\$1.8 billion) over 2016. U.S. goods exports to Qatar were \$3.1 billion, down 36.7 percent (\$1.8 billion) from the previous year. Corresponding U.S. imports from Qatar were \$1.2 billion, up 3.5 percent. Qatar was the United States' 50th largest goods export market in 2017.

Sales of services in Qatar by majority U.S.-owned affiliates were \$805 million in 2015 (latest data available), while sales of services in the United States by majority Qatar-owned firms were \$401 million.

U.S. foreign direct investment (FDI) in Qatar (stock) was \$8.7 billion in 2016 (latest data available), a 9.1 percent increase from 2015.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics' product safety.

Sanitary and Phytosanitary Barriers

In November 2016, the GCC announced that it would implement a “GCC Guide for Control on Imported Foods” in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC’s failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

IMPORT POLICIES

Tariffs

As a member of the 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 exempted from custom duties, in addition to over 600 other goods.

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, and tobacco products, implementation varies by Member State. U.S. beverage producers report 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. However, the excise tax has not yet come into effect.

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. Qatar had delayed moving forward until at least early 2019.

Import Licensing

Qatar only issues import licenses to national citizens and requires such a license for the importation of most products. 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. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork, pork products, and alcohol.

Documentation Requirements

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. Imported beef and poultry products require a health certificate and a halal slaughter certificate issued by an approved Islamic authority.

GOVERNMENT PROCUREMENT

Qatar's government procurement law, which entered into force in June 2016, established a new procurement department under the authority of the Ministry of Finance charged with regulating and standardizing government procurement. In late 2016, the Ministry of Finance launched an online procurement portal, where all government tenders are published.

Qatar provides a 10 percent price preference for domestic goods and a five 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. Tenders for procurement of goods, construction services, and services contracts for which the value does not exceed QR 5,000,000 (\$1,369,863) are restricted to the participation of commercially registered suppliers, contractors, and domestic services providers.

On October 7, 2017, in the context of the ongoing Gulf political dispute and subsequent efforts to increase economic self-sufficiency, the Qatari government issued a directive requiring all ministries and government entities to increase their procurement of domestic products to 100 percent if domestic goods meet the necessary specifications and comply with tendering rules.

Qatar is not 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 IPR regimes, the United States will continue to engage with GCC institutions and the Member States and to provide technical cooperation and capacity building programs on IPR policy and practice, as appropriate and consistent with U.S. resources and objectives.

SERVICES BARRIERS

Airline Subsidies

In 2015, three U.S. air carriers approached U.S. officials alleging that the Qatari government provides market-distorting subsidies to its airlines. The U.S. Government reviewed these claims and solicited information from the diverse range of aviation stakeholders regarding these allegations and related policy implications. On January 29, 2018, the United States and Qatar reached an understanding to address concerns raised by all U.S. stakeholders.

Agent and Distributor Rules

Only Qatari entities are allowed to serve as local agents or sponsors. However, exceptions are granted for 100 percent foreign-owned firms 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.

Banking

Although foreign banks are permitted to open branches and authorized to conduct all types of business in the Qatar Financial Center Regulatory Authority (QFCRA), 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 QFCRA differ from the ones adopted by the Qatar Central Bank and more closely resemble international standards.

INVESTMENT BARRIERS

Law 13 of 2000 on the Organization of Foreign Capital Investment currently requires foreign investors to have a Qatari partner with at least a 51 percent share in any investment. Foreign ownership of residential property is limited to select real estate projects. Foreigners can receive residency permits without a local sponsor if they own residential or business property, but only if the property is in a designated “investment area.”

The Qatari Cabinet approved draft legislation in January 2018, to allow 100 percent foreign capital investment in most sectors, with the exception of commercial agencies and real estate. Investment in the banking sector and insurance companies remain 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.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was \$10.0 billion in 2017, a 14.5 percent increase (\$1.3 billion) over 2016. U.S. goods exports to Russia were \$7.0 billion, up 20.6 percent (\$1.2 billion) from the previous year. Corresponding U.S. imports from Russia were \$17.0 billion, up 17.0 percent. Russia was the United States' 34th largest goods export market in 2017.

U.S. exports of services to Russia were an estimated \$4.5 billion in 2016 (latest data available) and U.S. imports were \$2.3 billion. Sales of services in Russia by majority U.S.-owned affiliates were \$9.8 billion in 2015 (latest data available), while sales of services in the United States by majority Russia-owned firms were \$679 million.

U.S. foreign direct investment (FDI) in Russia (stock) was \$10.6 billion in 2016 (latest data available), a 23.8 percent increase from 2015. U.S. direct investment in Russia is led by manufacturing, information, and wholesale trade.

Sanctions and Countersanctions

Russian counter-sanctions, levied in response to U.S. trade measures imposed on Russia as a consequence of its actions in Ukraine, have created uncertainty for American firms and reduced prospects for market penetration. 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.

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. In January 2018, pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, USTR issued its annual report "2017 Report on the Implementation and Enforcement of Russia's WTO Commitments." (This report is available at <http://www.ustr.gov>).

The Eurasian Economic Union

On January 1, 2010, the Russia-Kazakhstan-Belarus Customs Union (CU) entered into force when the three countries adopted a common external tariff (CET), with the majority of the tariff rates established at the level that Russia applied at that time. When Russia joined the WTO in 2012, the CU adopted Russia's WTO schedule of tariff bindings. On January 1, 2015, Russia, Kazakhstan, and Belarus established the Eurasian Economic Union (EAEU) as the successor to the CU.¹⁶ Armenia joined the EAEU on January 2, 2015, and Kyrgyzstan joined on August 12, 2015. 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.

¹⁶ For ease of reading, references to the EAEU in this Report generally include the CU.

The Treaty on the Function of the Customs Union in the Framework of the Multilateral Trading System (May 19, 2011) established the EAEU, replaced the Customs Union, and reinforced the primacy of WTO rules in the EAEU legal framework. As a consequence of its membership in the EAEU, Russia's import tariff levels, 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 the EAEU legal instruments. On these and other issues involving trade in goods, EAEU legal instruments establish the basic principles that are implemented at the national level through domestic laws, regulations, and other measures. EAEU legal measures also cover issues such as border enforcement of intellectual property rights, trade remedy determinations, establishment and administration of special economic and industrial zones, and the development of technical regulations and sanitary and phytosanitary (SPS) measures. On November 15, 2017, Russia ratified the EAEU Customs Code, which governs customs rules for all member countries; the EAEU Customs Code came into force as of January 2018.

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. Opportunities for testing and certification performed by competent bodies outside Russia are limited, and Russian authorities frequently demand repeated and redundant testing. Additionally, in many cases, only an entity registered and residing in Russia (or, in some cases, the EAEU) can apply for documentation necessary for product approvals. Manufacturers of telecommunications equipment, oil and gas equipment, toys, and construction materials and equipment, in particular, have reported difficulties in obtaining product approvals within Russia.

Alcoholic Beverages – Conformity Assessment Procedures, Standards, and Labeling

Russian and EAEU regulations on alcoholic beverages continue to raise trade-related concerns. At the national level, there has been a longstanding 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 FSR as part of its additional notification requirements appears duplicative of information required by Rospotrebnadzor in its registration process.

The EEC has been working on a draft Technical Regulation on Alcoholic Product Safety, which has 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, the Russian delegate assured WTO Members that the draft EEC regulation had been substantially revised, but Russia has not notified a new text 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 the adoption of 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. stakeholders have also raised concerns that the registration process for orphan drugs lacks clarity and is too vague to implement. Finally, Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical production has raised concerns that foreign manufacturers face stricter rules than do Russian producers, and that Russia has an insufficient number of GMP inspectors, raising the risk that some drugs will lose market access because of a backlog of inspections. The United States will continue to work with stakeholders to address specific market access concerns as they arise.

Transparency

The United States continues to emphasize to Russia the importance of timely notifications of draft technical regulations to the WTO to enable other WTO Members to provide comments prior to finalization. Although Russia has notified numerous technical regulations to the WTO, it 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; draft regulations related to measures for evaluation and approval of products containing genetically-engineered organisms; both Russian and EEC technical regulations governing chemicals; or the EEC's regulations governing food labeling.

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 addition, the United States has raised concerns about the 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 below, Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of 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 has imposed this ban despite the World Organization for Animal Health's (OIE) determination that the United States poses a negligible risk for BSE and beef produced in the United States therefore should not be subject to age restrictions. Furthermore, Russia's BSE requirements have effectively closed the Russian market for any 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 sound 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 more stringent than the maximum residue levels (MRLs) for beef set by Codex Alimentarius, the international food safety standard-setting body. At this time, the United States is not aware of any risk assessments conducted by Russia for these products. Although the United States has established a "Never Fed Beta Agonists Program," the Russian prohibition on these hormones continues 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 MRLs, 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 CU concluded negotiations on a United States-CU veterinary certificate for heat-treated milk products. Nevertheless, Russia has effectively banned the importation of U.S. dairy products since Rosselkhoznadzor (Russia's Federal Service for Veterinary and Phytosanitary Surveillance) has continued to enforce its September 2010 instruction to customs officials to allow shipments only from exporters on Rosselkhoznadzor-approved facility lists. The directive raises questions regarding Russia's compliance with its international obligations. (The EEC has now extended this listing requirement to most agricultural products. See below.) 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 Members 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, Russia committed either to align its tetracycline standards with Codex standards or to submit a risk assessment for tetracycline antibiotics conducted in accordance with Codex methodology. However, to date, Russia has yet to pursue either approach. Russia's adoption of a zero tolerance for beta-agonists (described above) has similarly 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) in the United States, as of May 30, 2014, Russia has 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. However, 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. Notwithstanding Russia's 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. The United States will continue to work with regulatory authorities in Russia to resolve these trade concerns.

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, has adversely impacted U.S. poultry trade with other EAEU countries that have lifted HPAI related restrictions, in particular Kazakhstan. Russia maintains HPAI-related bans on U.S. poultry despite the fact that the United States was declared HPAI free in April 2016. To date, Russia has not responded to repeated U.S. requests to address this issue.

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. Furthermore, when inputs for pet food or animal feed are sourced from a third country, Russia requires 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.

Agricultural Biotechnology

On July 3, 2016, Russia amended its legislation governing agricultural biotechnology. The amendments prohibit cultivation of genetically engineered (GE) plants and the breeding of GE animals on the territory of the Russian Federation, prohibit the importation of GE planting seeds, strengthen state control and monitoring of processing and importation of GE organisms and products derived from such organisms, and establish the 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.

With regard to approvals for GE food and feed products, the United States has long had concerns about the implementation of Russia's registration process. The United States has been particularly concerned that Russia imposes a ten-year time limit on registrations for GE feed products. Registrations for GE food products are effective for an unlimited period. Russia charges an application fee for each initial registration of a food or feed product, and for each subsequent re-registration of a feed product. The fee costs on average \$100,000. This fee, in the view of U.S. stakeholders, is excessive.

Further procedures for the registration (and re-registration) of GE feed products have been placed on hold since 2016 while Russia's new Methodological Guidance for the Safety Assessment of GE Feed awaits approval. This situation creates uncertainty as the registrations for a number of registered products are expiring. In November 2017, the government of Russia published two draft policy documents relating to GE feed registration. If approved, the new GE policy will extend the expiration dates for the registrations of currently approved or registered GE feed products until July 1, 2018. However, the policy does not include a specific methodology for analyzing and registering GE feeds.

Furthermore, Russia still does not have a fully functioning system for approving GE crops that contain stacked events. Rospotrebnadzor has implemented a system for approval of stacked events for food crops (and approved one stacked event). Rospotrebnadzor has not, however, developed or implemented a system for registering stacked events for feed crops.

Zero-Tolerance for 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 delisting 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 approved supplier lists. 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 approval of a facility, without providing any rationale. The United States will work closely with Russia to ensure that the EAEU inspection regulation is implemented fully.

IMPORT POLICIES

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from the United States, the European Union, Canada, Australia, and Norway 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. In June 2015, Russia amended the list of products covered by the ban and expanded the list of countries whose products were banned, adding Albania, Montenegro, Iceland, Liechtenstein, and Ukraine. (The ban did not apply to agricultural products from Ukraine until January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU.) Every year since, Russia has modified the list of goods subject to the import ban and extended its application for another year. The ban currently applies until the end of 2018.

Russia has also subjected many transit shipments of banned goods to Kazakhstan and Kyrgyzstan to additional scrutiny, raising the cost of the transit of goods through Russia to these countries. Russia has stated that the ban is justified on the basis of national security concerns.

Tariffs, Customs Issues and Taxes

Although Russia implemented the fourth round of annual tariff reductions in August 2017 as required by its WTO commitments, the implementation of some of its other tariff commitments has raised concerns. One source of concern stems from stakeholders' assertions about the use of benchmark pricing on imports of certain types of footwear. Another area of concern is Russia's implementation of decisions of the EEC (the EAEU body responsible for administering the CET). 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 has indicated its intention to implement the panel's recommendations. Also 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.

Importers of alcoholic products face a longstanding customs challenge in the requirement that all customs duties, excise taxes, and value-added taxes on alcohol be paid in advance of customs entry using a bank guarantee (or other type of deposit). Russian Customs often requires bank guarantees far in excess of the actual tax liability of the covered goods, especially for lower-value products. Russian law permits the Customs Service 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 – though not considered by – Russian Customs. In addition, stakeholders have reported that refunds or releases of these guarantees are sometimes delayed for seven to nine months. Further, some Russian 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 Russian Customs of assessing tariffs on the royalty value of some imported audiovisual materials, such as TV master tapes, DVDs, and digital cinema packs, represents a form of double taxation because royalties are also subject to withholding, income, value-added (VAT), and remittance taxes. U.S. consumer goods companies have similarly reported that Russian Customs calculates 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. 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 non-Russian films. This practice increases the cost of screening U.S. films.

U.S. stakeholders have raised concerns about the administration of Russia’s copyright levy system. Russia collects a levy on both domestically produced and imported products that can be used to copy material protected by copyright for personal use (*e.g.*, video recorders, voice recorders, and photocopy machines). Those levies are provided to an accredited royalty collecting society for distribution to rights holders. However, the list of domestically produced products on which the levies are paid appears to differ from the list of imported products on which the levies are paid. In addition, the reporting and payment systems also appear to differ. Russian Customs 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 pay based on sales and self-notify. 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 legal authority of that collecting society to collect levies 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, but the restrictions on interactions with Russian government officials has reduced the ability to resolve these issues.

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 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.

Import and Activity Licenses

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 have, over the years, faced uncertainty with regard to Russia’s regulatory regime (see the section on *Alcoholic Beverages – Conformity Assessment Procedures, Standards, and Labeling* for more information). For example, Russia’s Federal Service for the Regulation

of the Alcohol Market (FSR) still requires an activity license to warehouse and distribute alcohol in Russia, and stakeholders assert that the difficulty and expense involved in obtaining this license is disruptive to trade. The process is burdensome and expensive, and 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.

Recycling Fees

Since 2012, Russia has imposed a "recycling fee" on automobiles and certain other wheeled vehicles that requires importers and manufacturers 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, intended to cover the cost of recycling the automobile at the end of its useful life. In 2016, rates ranged from 3,400 rubles to 9.2 million rubles (approximately \$60 to \$161,000 for new vehicles and from 5,200 rubles to 35.72 million rubles (approximately \$91 to \$625,000) for used vehicles. In fact, the fee was increased by, on average, 65 percent for vehicles produced or imported after January 1, 2016, 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 receive the offset subsidies.

In 2015, Russia also implemented a Waste Management Law that imposes a "disposal fee" on waste products (*e.g.*, plastic containers and paper packaging) as well as a fee on agricultural and forestry machinery (known as a "utilization fee") to be paid by importers and domestic producers to cover the recycling, salvage, reclamation, and disposal of those products. As with the vehicle recycling fee, industry stakeholders contend that although the utilization fee appears non-discriminatory (because it must be paid by both importers and domestic producers), Russia in fact has introduced subsidies that effectively reimburse domestic producers for having to pay the utilization fee.

Import Substitution Policies

In 2016, Russia continued to accelerate its promotion of import substitution and called for more local content across a variety of sectors. (See the section on *Services 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 defense, health care, consumer goods, oil and gas equipment, solar energy products, light industry, textiles, optical fiber, and agriculture.

Initially, the Russian government implemented these preferences primarily through government procurement (see the section on *Government Procurement* for more information), but in 2015 extended the mandated preferences to purchases by state-owned enterprises (SOEs).

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 Belarusian) 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 could 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. In addition, 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, with varying deadlines depending on the use, age, and size of the aircraft, but on all aircraft no later than 2016. In addition, any foreign-manufactured aircraft listed in a Russian airline’s Air Operator Certificate must have had 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. aircrafts are not currently configured for GLONASS, modifications to the aircraft would be necessary to meet this new 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 as of the end of 2016 will be exempted from this requirement for the duration of the validity of the certificates (*i.e.*, three years).

In 2015, the Russian government began to extend its local content requirements beyond government procurement to purchases by state-owned or 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 for large investment projects by SOEs, state corporations, or certain private businesses must be sourced locally. 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 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 will effectively favor domestic SMEs.

Russia appears committed to continue its policies of import substitution. For example, since implementing the import ban on certain agriculture products, Russian government officials have pressed for greater food self-sufficiency. 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 addition, Russia 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. Special Investment Contracts 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 companies to participate in certain Russian subsidy programs designed for domestic manufacturers, as well as entitle those firms to certain tax incentives. Taking its preference for domestic products even further, the Russian government issued a resolution in September 2016 mandating a 15 percent price preference for Russian goods, works, or services purchased by SOEs. The new resolution also mandated that procurement must comply with Russia's commitments under the 2014 Eurasian Economic Union Treaty, as well as provisions of the General Agreement on Tariffs and Trade (GATT).

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 on *Government Procurement* for more information).

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, Russia has maintained a "temporary" export ban on certain raw hides and skins since January 2014, and introduced export duties on certain chemicals and anodes of the platinum group of metals in 2015. In February 2015, Russia imposed a fixed export duty on wheat, but later reduced that duty rate to zero due to a bumper wheat crop. However, because the reduction is only temporary (ending in July 2018), Russia retains the ability to reinstate the export duty expeditiously if the need arises, contributing to uncertainty in the market. Moreover, with yet another record high wheat crop in 2017, Russia instituted a grain export subsidy in late 2017 to cover the cost of transporting grains by rail to export ports.

In addition, Russia expanded the list of products that are "essentially significant for the domestic market" and hence for which exports could be restricted or banned to include a variety of ferrous steel and non-ferrous 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 ferrous scrap for export to global markets and caused concern among U.S. stakeholders of possible market distortions.

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 oil 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 were no changes to rates or notifications sent to the WTO of elimination of differential freight rates.

SUBSIDIES

In January 2015, Prime Minister Dmitry Medvedev signed the government’s “Plan of Priority Measures to Ensure Sustainable Economic Development and Social Stability in 2015,” 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, 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 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 body of external public audit 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 are 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 (including foreign companies that qualify as domestic tax residents) of agricultural machinery.

Gazprom, a publicly listed but state-controlled Russian company, currently 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 has 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.

GOVERNMENT PROCUREMENT

Russia became an observer to the WTO’s Government Procurement Agreement in May 2013, and in June 2017, submitted its initial GPA market access offer. 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 exclude U.S. exports 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 from procuring 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 percent 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 two or more companies from the EAEU submitted a bid; as noted above, the list of covered medical devices was expanded in 2016. In August 2016, the Russian government also established a ban on 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, 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 on *Import Substitution Policies* for more information.)

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Russia remained on the Priority Watch List in the 2017 Special 301 Report. The Report identifies online piracy, failure to allocate adequate resources to intellectual property rights (IPR) enforcement, manufacture of and trade in counterfeit goods, and the absence of transparency as some of the significant obstacles to adequate and effective protection of IPR in Russia. Multinational and U.S. companies continue to report counterfeiting in the areas of consumer goods, distilled spirits, agricultural chemicals, biotechnology

products, and pharmaceuticals. 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. Several online markets with ties to Russia were identified in the 2017 Notorious Markets List as reportedly engaging in or facilitating substantial online piracy, including Firestorm-servers.com, LibGen.io and Sci-Hub.io, Movie4k.tv, MP3VA.com, Rapidgator.net, and VK.com. Finally, the U.S. pharmaceutical industry has expressed concerns about Russia's inadequate protection of regulatory test and other undisclosed data, support for compulsory licensing, proposals to allow parallel imports, and weak patent enforcement.

SERVICES BARRIERS

In July 2017, the Russian government moved to restrict access of foreign service providers to its online video market. Under the new "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 TV. While having little impact on state-owned (and state-financed) TV channels, this prohibition will, according to industry representatives, have a significant adverse financial impact on foreign cable and on demand service providers.

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. In addition, the ability of foreign service suppliers to provide services to public utilities and certain energy related services remains limited. Finally, the Ministry of Justice is considering legislation to prohibit foreign ownership of legal firms.

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". 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 the domestic competitor (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.

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. 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. In addition, 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. Further obstacles to investment in Russia include lack of an unbiased judiciary, inadequate dispute resolution mechanisms, onerous licensing

requirements, 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 enforcement of the rule of law.

The 1999 Investment Law contains broadly defined provisions that give Russia considerable discretion to prohibit or limit foreign investment in potentially discriminatory fashion. For example, the Investment 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 Investment 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.

Measures in specific sectors limit the participation of foreign investors in various areas of the Russian economy. With respect to land ownership, for example, foreign persons or entities may not own land located in border areas or other specifically assigned locations. Foreign citizens and legal entities also 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). In the media sector, pursuant to the October 2014 law "On Mass Media," foreign investors in Russian media companies were given until February 1, 2017 to reduce their equity in these companies to 20 percent (the previous law applied a 50 percent limit only to Russia's broadcast sector). In the mining and mineral extraction sectors, U.S. stakeholders have raised concerns over limits on direct investments 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 state-owned enterprises (SOEs) play a prominent role across much of Russia's economy, and the government appears to be increasing state control as the economy continues to weaken (see discussion of *Import Substitution Policies* above). Private enterprises are, theoretically, allowed to compete on the same terms and conditions as SOEs. In practice however, 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 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" (there are currently six: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec), 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.

While federal budget constraints have increased the priority of privatization, much of Russia's privatization program either has failed to materialize or is behind schedule. The treatment of foreign investors in

privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, with attendant concerns about protection of minority shareholders and adequate corporate governance.

Taxes

Russian and U.S. leasing companies have reported that the VAT assessed on inputs for exported final products is often not refunded, and that they often must resort to court action to obtain reimbursements to which they are entitled. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. In addition, these companies have reported that, in some cases, local tax inspectorates have initiated audits and attempted to seize their bank accounts, thus forcing exporters to engage in expensive and time-consuming court proceedings.

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 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.

Automotive Sector

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 raised 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. As part of its WTO accession, Russia acknowledged the WTO inconsistency of certain elements of the automotive industry incentives programs and agreed to end them by July 1, 2018. Russia further agreed to begin consultations starting in July 2016 with the United States and other WTO Members on WTO-consistent measures it may take in this sector. The United States will work with Russia to eliminate these elements of the automotive industry incentive programs.

BARRIERS TO DIGITAL TRADE

Data Localization

In 2015, Russia adopted Federal Law No. 242-FZ that requires any company collecting personal data of Russian citizens through automated or computerized means to store and process the data on Russian territory. Initial guidance from the Russian Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) indicates that non-Russian companies would be allowed to send data outside the country as long as it was collected with the use of local infrastructure in Russia and that a copy of the data remains stored and processed on local infrastructure. 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 nevertheless 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. 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 2016, Russia extended the data storage requirements with the "Yarovaya Amendments," requiring certain telecommunications operators to store locally metadata for 6 months, with longer storage requirements depending on the type of provider.

To date, Russian telecommunications watchdog Roskomnadzor has inspected more than 1,000 domestic and foreign companies for compliance with the 2015 law, typically resulting in administrative warnings or nominal fines for violations. In November 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 April 2017, it blocked access to a U.S. based application providing push-to-talk communications. Roskomnadzor has warned other Internet companies that without full compliance in 2018 they may also be blocked in Russia. 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.

Technology

Encryption

Industry asserts that the so-called 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 IPNs that allow VPNs to exist or function without being blocked. 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

Tariffs and Other Duties

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. Although the Ministry of Economic Development in 2014 proposed reducing the current €1,000 (\$1,200) maximum to €500 (\$600) per month, no decisions to reduce the duty-free limit have been taken. As of January 1, 2017, a VAT of up to 18 percent applies to Internet purchases and affects at least 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). Currently, application vending sites do not pay VAT on purchases by Russian Internet users. Since January 2017, the largest online retailers have been required to register with the Russian Federal Tax Service.

SAUDI ARABIA

TRADE SUMMARY

The U.S. trade balance with Saudi Arabia shifted from a goods trade surplus of \$1.1 billion in 2016 to a goods trade deficit of \$2.6 billion in 2017. U.S. goods exports to Saudi Arabia were \$16.3 billion, down 9.5 percent (\$1.7 billion) from the previous year. Corresponding U.S. imports from Saudi Arabia were \$18.9 billion, up 11.5 percent. Saudi Arabia was the United States' 20th largest goods export market in 2017.

U.S. exports of services to Saudi Arabia were an estimated \$9.6 billion in 2017 and U.S. imports were \$1.2 billion. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$5.1 billion in 2015 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were \$3.5 billion.

U.S. foreign direct investment (FDI) in Saudi Arabia (stock) was \$9.8 billion in 2016 (latest data available), a 1.6 percent increase from 2015. U.S. direct investment in Saudi Arabia is led by nonbank holding companies, mining, and manufacturing.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Saudi Arabia is developing and implementing new energy efficiency standards for a variety of products (including vehicles, air conditioners, electrical appliances, lighting, electrical motors, tires, insulation and others) that could serve as unnecessary barriers to trade. 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.

Over the course of 2017, Saudi Arabia continued to revise technical regulations for a variety of products based solely on standards developed by the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). Saudi Arabia has not accepted other international standards, such as those developed by U.S.-domiciled organizations through open, transparent and consensus-based processes – and 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 industrial and consumer products exported from the United States. U.S. Government officials continue to engage Saudi standards bodies on the importance of accepting international standards developed by U.S.-domiciled organizations.

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics’ product safety.

Sanitary and Phytosanitary Barriers

In June 2016, the United States and Saudi Arabia announced an agreement to reopen the Saudi market to U.S. beef and beef products from cattle under the age of 30 months, with a phased-in approach for full access for beef and beef products in the future. In May 2012, Saudi Arabia had banned imports of these products following an atypical case of bovine spongiform encephalopathy in the United States. U.S. beef and beef products began shipping to Saudi Arabia in 2017 pursuant to the agreement.

In November 2016, the GCC announced that it would implement a “GCC Guide for Control on Imported Foods” in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC’s failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

IMPORT POLICIES

Tariffs

As a member of the 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. The tariff rate for tobacco products is 100 percent.

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, and tobacco products, implementation varies by Member State. U.S. beverage producers report 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 Saudi Arabia, a 100 percent tax on tobacco products and energy drinks and a 50 percent tax on sweetened carbonated drinks took effect 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.

Import Prohibitions and Licenses

Saudi Arabia prohibits the importation of 61 categories of products, including alcohol, pork products, frog meat, automobiles and automotive parts older than five years, eagle emblems, disguise masks, gambling devices, dummies, musical greeting cards, and old newspapers. Special approval is required for the importation of live animals, horticultural products, seeds for use in agriculture, products containing alcohol, religious materials that do not adhere to the state-sanctioned form of Islam or that relate to a religion other than Islam, chemicals and harmful materials, pharmaceutical products, wireless equipment, radio-controlled model airplanes, natural asphalt, archaeological artifacts, audio or visual media, books, and periodicals. Some media products that are imported are subject to censorship.

Customs

U.S. private sector stakeholders consistently raise concerns about the policies and practices of Saudi Customs, including inconsistent application of regulations, inaccurate assessment of duties, delayed clearance of goods, and the 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 Saudi Customs in 2017 has led to reduced documentation requirements, shortened clearance times in major ports, and increased cooperation across Saudi trade agencies.

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. Most defense procurement is negotiated on a case-by-case basis, and contractors are subject to an offset rate of 40 percent of the total value of the contract and must ensure that at least half of all offsets are direct. 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 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 of the WTO Agreement on Government Procurement (GPA). Although Saudi Arabia committed to initiate negotiations for accession to the WTO GPA when it became a WTO Member in 2005, it has not yet begun those negotiations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2016, Saudi Arabia's Food and Drug Authority (SFDA) granted a license to a domestic company to produce a generic version of a pharmaceutical product that appears to currently be protected under Saudi Arabia's system for protecting against the unfair commercial use as well as the unauthorized disclosure of test or other data generated to obtain marketing approval for pharmaceutical products. In April 2017, SFDA granted a license to a domestic company to produce a generic version of a pharmaceutical product that is protected under patent in Saudi Arabia. The United States continues to urge Saudi Arabia to ensure clarity and consistency in providing intellectual property rights (IPR) protection and enforcement for U.S. products in Saudi Arabia.

In addition, industry groups continue to raise concerns regarding the use of unauthorized software by the government, while reporting substantial challenges with copyright and trademark enforcement writ large. In particular, rights holders have difficulty obtaining information from the Ministry of Culture and Information and the Ministry of Commerce and Investment on the status of enforcement actions and investigations. Other concerns include the limited number of, and training for, copyright inspectors in the Department of Copyright at the Ministry of Culture and Information, the lack of seizure and destruction of counterfeit goods in 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. The United States will continue to work with Saudi Arabia and stakeholders to address these concerns.

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

SERVICES BARRIERS

Audiovisual Services

Saudi Arabia has long banned the construction or operation of public cinemas. However, the Ministry of Culture and Information announced in December 2017 that commercial cinemas will be allowed to operate, as of early 2018. The Board of the General Commission for Audiovisual Media will be authorized to grant licenses to cinemas, including commercial providers. In 2016, the Saudi government created a new General Entertainment Authority that is developing other new recreational and entertainment options, including live musical, dance, comedy, and other public performances.

Banking

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

Saudi Arabia requires that all insurance companies be locally incorporated joint-stock companies, with foreign equity limited to 60 percent. The remaining 40 percent must be sold in the Saudi 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

Certain professionals, including architects and consultants, are required to register with, and be certified by, the Ministry of Commerce and Investment. In addition, entities providing legal, accounting and auditing, design, architecture, healthcare, dental, or veterinary services must have a Saudi partner, and the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment.

BARRIERS TO DIGITAL TRADE

In 2016, Saudi Arabia's Communications and Information Technology Council issued a Public Consultation Document on the Proposed Regulation for Cloud Computing. This proposed regulation would require cloud service providers to store certain types of data locally based on a four tier data classification system. If approved, such a regulation could restrict access to the Saudi market for foreign Internet services.

INVESTMENT BARRIERS

Foreign investment is currently prohibited in 15 sectors and subsectors, including production, manufacturing, and services related to military activity, as well as oil exploration and drilling. 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 wishing to exercise such ownership are required to satisfy a number of conditions, including that they maintain operations in three international markets and 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.

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; have assets under management of at least \$1 billion; and have been engaged in securities or investment-related activities for at least 5 years. 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 \$10.4 billion in 2017, a 16.5 percent increase (\$1.5 billion) over 2016. U.S. goods exports to Singapore were \$29.8 billion, up 11.3 percent (\$3.0 billion) from the previous year. Corresponding U.S. imports from Singapore were \$19.4 billion, up 8.8 percent. Singapore was the United States' 13th largest goods export market in 2017.

U.S. exports of services to Singapore were an estimated \$18.0 billion in 2017 and U.S. imports were \$7.6 billion. Sales of services in Singapore by majority U.S.-owned affiliates were \$80.0 billion in 2015 (latest data available), while sales of services in the United States by majority Singapore-owned firms were \$9.4 billion.

U.S. foreign direct investment (FDI) in Singapore (stock) was \$258.9 billion in 2016 (latest data available), a 3.2 percent increase from 2015. U.S. direct investment in Singapore is led by nonbank holding companies, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States-Singapore Free Trade Agreement (FTA) has been in effect since 2004, and the two countries meet regularly to review implementation of the agreement. Singapore has many bilateral and regional FTAs including with Australia, China, Costa Rica, India, Japan, Jordan, Korea, New Zealand, Panama, Peru, and Turkey. Singapore is a participant in the Regional Comprehensive Economic Partnership regional trade negotiations, which include the ten Association of Southeast Asian Nations (ASEAN) countries plus Australia, China, Japan, Korea, India, and New Zealand, and it is a participant in the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Singapore also has concluded an FTA with the European Union, which has not yet entered into force.

SANITARY AND PHYTOSANITARY BARRIERS

Beef, Pork, and Poultry Pathogen Reduction Treatments (PRTs)

Prior to 2012, Singapore's Agri-Food and Veterinary Authority (AVA) prohibited the use of all Pathogen Reduction Treatments (PRTs), also known as antimicrobial treatments or antimicrobial interventions, 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 Singapore. Effective February 2013, Singapore permitted the use of eight PRTs on fresh/chilled and frozen meat and poultry carcasses and meat and poultry cuts certified for export to Singapore. Since April 2016, Singapore has permitted the use of a ninth PRT.

The United States and Singapore signed a letter exchange on sanitary and phytosanitary (SPS) issues in February 2016. The letter exchange established a Bilateral Cooperative Mechanism on Pathogen Reduction Treatments. The United States continues to work with Singapore to secure the approval of additional PRTs by Singaporean authorities.

Pork/Trichinae and Permissible Time Limits

Singapore requires pork imports from the United States to be frozen or tested for trichinosis, even though U.S. producers maintain stringent biosecurity protocols that have virtually eradicated trichinae in commercial pork production in the United States. U.S. industry sources note that the requirement delays export by two to three weeks, adding to inventory and related costs. Singapore also imposes time-frame requirements on imported meat and poultry products pursuant to which such products can enter Singapore only within a specified length of time after slaughter or manufacture.

In February 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 technical experts with respect to pork-related trade issues, including trichinella-related mitigations for the shipment of fresh or chilled pork and pork-meat products from the United States to Singapore and the length of time after slaughter that 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 an agreement as soon as possible through the Pork Trade Bilateral Cooperation Mechanism to resolve these issues.

IMPORT POLICIES

Tariffs

All U.S. exports to Singapore under the FTA are duty free.

Import Licenses and Internal Taxes

Singapore maintains a tiered motorcycle-operator licensing system based on engine displacement, which, along with a road tax based on engine size and regulations that limit the power output of electric motorcycles to no more than 10 kilowatts, discourages imports of large motorcycles from the United States. In February 2017, Singapore further discouraged motorcycle imports by introducing a tiered system of additional registration fees, which serve as a de facto additional tax on motorcycles and significantly increase their price. Compared to the previous flat rate of 15 percent, motorcycle owners must now pay a rate of 50 percent on excess value above S\$5,000 (approximately \$3,800) and a rate of 100 percent on excess value above S\$10,000 (approximately \$7,600). Singapore restricts the import and sale of non-medicinal chewing gum. It also levies high excise taxes on distilled spirits and wine, tobacco products, and motor vehicles.

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, U.S. stakeholders have raised some 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 May 2017, the government of Singapore opened a public consultation on the Copyright Collective Rights Management framework for creators, users, and Collective Management Organizations as part of a broader review of the copyright legal framework in Singapore. It also concluded a second round of public consultations on proposed changes to Singapore's patent regime in August 2017.

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

Media, Entertainment, and Broadcast Services

Pay Television

In 2011, the Media Development Authority (MDA), now the Info-communications Media Development Authority of Singapore (IMDA), implemented regulations requiring pay TV providers to “cross carry” exclusive broadcasting content acquired after March 12, 2010. These rules are still in place and require a pay TV company with an exclusive contract for channels or content to offer that content to subscribers of other pay TV 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, including with respect to exclusive content supplied via the burgeoning “over-the-top” (OTT) model (serving subscribers via the Internet, rather than via 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.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite TV services. IMDA licenses the installation and operation of broadcast receiving equipment, including satellite dishes for TV reception. Parties who require TV 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.

Legal 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.

Banking

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 of 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 and where there are substantial benefits to Singapore.

Healthcare: Procedural Transparency

U.S. stakeholders have expressed interest in greater transparency regarding Ministry of Health subsidy policies and procedural rules regarding pharmaceuticals, notably for approvals of biopharmaceutical innovations.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was \$2.7 billion in 2017, a 25.8 percent increase (\$557 million) over 2016. U.S. goods exports to South Africa were \$5.0 billion, up 9.5 percent (\$438 million) from the previous year. Corresponding U.S. imports from South Africa were \$7.8 billion, up 14.7 percent. South Africa was the United States' 42nd largest goods export market in 2017.

U.S. exports of services to South Africa were an estimated \$2.8 billion in 2017, and U.S. imports were \$1.9 billion. Sales of services in South Africa by majority U.S.-owned affiliates were \$6.9 billion in 2015 (latest data available), while sales of services in the United States by majority South Africa-owned firms were \$498 million.

U.S. foreign direct investment (FDI) in South Africa (stock) was \$5.1 billion in 2016 (latest data available), a 5.2 percent decrease from 2015. U.S. direct investment in South Africa is led by manufacturing, professional, scientific, and technical services, and wholesale trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Food and Beverages

In 2012, the South African Department of Health implemented a labeling regulation for foodstuffs (Regulations Relating to the Labeling and Advertising of Foodstuffs (R146)) that restricts the use of testimonials, endorsements, or statements claiming food as “healthy” or “nutritious” as well as the use of the term “diet.” In 2014, the Department of Health published draft regulations that would further prohibit the use of these terms unless the food contains no added sodium, sugar, or saturated fat, or only contains “low” levels of them. In addition, the draft regulations would prohibit the use of these terms for foods that contain any addition of fructose, non-nutritive sweeteners, fluoride, aluminum, or caffeine, in any quantity. The Department of Health has indicated in the draft regulations that, in the case where health claims or nutrient content claims form part of a brand name or trademark, the use of that brand name or trademark on the packaging of the foodstuff would be required to be phased out. U.S. stakeholders are concerned that these new regulations could require some brand owners to make changes to existing trademarks, branding, and labels in order to continue to sell their products in South Africa. As of the end of 2017, the Department of Health has not implemented the 2014 draft regulations and is reconsidering the labeling requirements.

In September 2016, the Department of Trade Industry (DTI) published for public comment 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 have been introduced as of December 2017.

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 1/8 of the total container size, as opposed to 1/8 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.

Information Technology Products

U.S. technology firms report that South African delays in issuing letters of authority (LOAs) have been largely resolved. LOAs are conformity assessments that show that products imported into South Africa meet the relevant South African standards. Previously, it took the National Regulator for Compulsory Specifications (NRCS, an agency within the South African Bureau of Standards that falls under the purview of the DTI), up to 350 days, or more, to approve and issue LOAs, almost triple the 120 day timeframe originally proposed by the NRCS. LOAs are now routinely approved within 80 days.

The United States regularly engages with South Africa on these and other issues related to technical barriers to trade at the WTO, through bilateral discussions, and under the United States-South Africa Trade and Investment Framework Agreement.

Sanitary and Phytosanitary Barriers

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 South Africa’s Department of Agriculture, Forestry, and Fisheries (DAFF) reached agreement on the content of a U.S. Department of Agriculture (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. Under the agreement, U.S. poultry has been successfully imported into South Africa since February 2016.

Despite its resumption of importation of U.S. poultry, prior to January 2018 South Africa required that exports of U.S. poultry meat to South Africa be produced from U.S. birds hatched and raised within the United States. This requirement restricted exports of U.S. turkey from meat produced from Canadian poults. Although less than 5 percent of U.S. turkey meat is produced from Canadian poults, all U.S. turkey exporters were required to certify that meat was not produced from Canadian poults. In January 2018, USDA and DAFF reached agreement on an amendment to the USDA export health certificate for poultry to allow the importation of U.S. turkey meat produced from turkeys grown from Canadian poults as long as: the Canadian poults are legally imported into the United States; they are raised in the United States for at least 42 days prior to slaughter; and at the time of import into the United States, Canada is free of HPAI.

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. Additionally, the United States seeks to gain access for blueberries.

IMPORT POLICIES

Tariffs

South Africa is a member of the WTO, the Southern African Development Community (SADC), and the Southern African Customs Union (SACU). As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa sets the level of 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's average applied MFN duty rate in 2017 was 7.6 percent. South Africa has preferential trade agreements with the European Union (EU), the Southern Common Market (MERCOSUR), the European Free Trade Area, and SADC. 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, Lesotho, Mozambique, Namibia, South Africa, and Swaziland. Angola is an observer to the agreement.

U.S. exports face a disadvantage compared to EU goods in South Africa. The European Union-South African Trade and Development Cooperation Agreement (TDCA) of 1999 covers a significant amount of South Africa-EU trade. South Africa's tariffs applied to imports from the EU on TDCA-covered tariff lines average 4.5 percent based on an unweighted average, while the MFN duty rate, which applies to imports from the United States, averages 18.4 percent for the same TDCA-covered lines. Final phase-in of the EU tariff preferences under the TDCA became effective in 2012. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, trucks, and agricultural products and machinery.

The EU-SADC EPA will further erode 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 (AGOA). South African authorities have emphasized that the only way to address this imbalance is through a free trade agreement.

In recent years, the South African government has encouraged domestic industry to appeal for increases up to the bound tariff rates where a lack of global competitiveness was a concern. In September 2013, the South African International Trade Administration Commission (ITAC) increased import duties for whole chickens to the maximum bound rate of 82 percent, and announced import duty increases for other poultry

products, including an increase in duties to 37 percent for imports of frozen bone-in chicken. South Africa raised the tariffs in response to requests from its domestic industry. Imports of U.S. frozen bone-in chicken are also subject to antidumping duties. 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 maintain the anti-dumping duties for frozen bone-in portions of chicken originating in or imported from the United States.

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 improper 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 agreement on an understanding 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. trade in frozen bone-in chicken subject to the agreement to begin. In February 2016, shipments of U.S. frozen bone-in chicken subject to the TRQ began to be imported into South Africa.

Nontariff Measures

The DTI 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 2 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.

The Ministry of Finance announced in its February 2016 budget a decision to introduce a tax on sugar-sweetened beverages in an effort to reduce excessive sugar intake, with a proposed effective date of April 1, 2017. In July 2016, the National Treasury published for public comment a policy paper and proposals on the taxation of sugar-sweetened beverages. The paper recommended that a tax on sugar-sweetened beverages based on sugar content be implemented. 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 proposed tax on sugar-sweetened beverages. The tax, which applies to both imported and domestically-manufactured beverages, is meant to encourage the reduction in 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. The tax will impose a rate of 2.1 cents per gram of sugar above the threshold of 4 grams per 100ml, a revision from the original proposal of a flat 2.29 cents tax per gram of sugar. One-hundred percent fruit and vegetable juices, and milk products with no added sugar will be exempt from the tax. The tax will become effective in April, 2018. Some stakeholders have expressed concern that the application of taxes on sugar-sweetened beverages, including on energy drinks, may be applied inconsistently and discriminatorily.

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 and could impact foreign investment in South Africa.

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 and/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 section on Investment Barriers for more information on B-BBEE.*)

South Africa is not a party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In recent years, the South African government has made an effort to improve enforcement of intellectual property rights (IPR) by appointing additional inspectors, improving the training of enforcement officials, and increasing public awareness of IPR protection. Also, in an effort to modernize outdated copyright law to incorporate “digital age” advances, the DTI introduced the Copyright Amendment Bill in May 2017. In September 2017, the DTI released a revised national IP policy framework, which lays the groundwork for future legislation and regulations governing IP in South Africa. The framework will be implemented in phases, and will reportedly cover areas such as IP and public health, certification marks, geographical indications (GIs), and biotechnology, among other IP-related topics. The new IP framework calls for guidelines to streamline and expedite compulsory license applications, potentially removing them from a judicial process under South African law. The United States will continue to monitor the government of South Africa as it develops and implements the new copyright bill and IP framework.

Under the EU-SADC EPA, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms as GIs in its domestic market. This commitment could have an adverse impact on certain U.S. agricultural products.

SERVICES

Telecommunications

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 recommends a number of policies that could lead to a fundamental restructuring of the telecommunications market. The white paper proposes opening access to both telecommunications infrastructure and high-demand spectrum, and envisages the creation of a single national Wireless Open Access Network for high-demand spectrum run by a public-private partnership. Some analysts have expressed concerns that the South African government could redistribute high-demand spectrum previously awarded to mobile carriers. The ICT white paper also proposes creating a separate broadcasting regulator and a new regulator for ICT.

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 2017, the Minister of Finance announced plans to dispose of a portion of its Telkom shares as a fiscal consolidation measure.

Broadcasting

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 December 2017, 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.

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 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 high 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 by scoring higher

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.”

Mineral and Petroleum Resources Development Act (MPRDA)

U.S. stakeholders have expressed concerns about South Africa’s long-disputed draft MPRDA, which would grant the government 20 percent carried interest in any new petroleum or mineral activity, and allow the government to acquire additional ownership of any such venture on terms determined by the Minister of Mineral Resources. The Department of Mineral Resources has been working with U.S. and other international oil companies to address concerns raised about the draft legislation.

Other Concerns for Investment

Former President Zuma signed the Protection of Investment Act into law in December 2015. The language of the Act appears overly 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 Act, 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.” The legislation is currently pending. In February 2018, Parliament passed a motion to open debate on whether or not to amend the constitution to permit expropriation of property without compensation. Parliament’s constitutional committee will conduct a review, to be completed by August 2018, to determine whether to proceed with a constitutional amendment.

Another concern for investors is the Private Security Industry Regulation Act Amendment Bill, which, if signed, would require 51 percent local ownership in private security firms. The United States has raised concerns about the local ownership provision of the bill in bilateral discussions with South Africa.

OTHER BARRIERS

Transparency 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 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 ten 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 \$2.5 billion in 2017, a 4.4 percent increase (\$107 million) over 2016. U.S. goods exports to Sri Lanka were \$336 million, down 8.8 percent (\$32 million) from the previous year. Corresponding U.S. imports from Sri Lanka were \$2.9 billion, up 2.7 percent. Sri Lanka was the United States' 112th largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Sri Lanka (stock) was \$117 million in 2016 (latest data available), a 3.5 percent increase from 2015.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Biotechnology

Sri Lanka prohibits the sale of seeds derived from agricultural biotechnology or products containing agricultural biotechnology components intended for human consumption without the approval of Sri Lanka's Chief Food Authority. Sri Lanka does not appear to have a functioning approval mechanism and thus in effect has a ban on sales of seeds and other agricultural products derived from biotechnology. Furthermore, Sri Lanka requires all 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 despite the fact that the OIE recommends that areas affected by avian influenza can resume trade three months after the last detection. Sri Lanka's extended ban impedes U.S. exports of poultry products.

Meat Products

Sri Lankan animal health authorities take lengthy periods to conduct microbiological tests of meat shipments. Furthermore, these authorities occasionally reject imports based on testing methods that are not consistent with those that are 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 could force 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.

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. The 2018 government budget (released in November 2017) proposed to establish a duty of rupees (Rs) 0.5 per gram of sugar (approximately \$3.21 per kilo of sugar) contained in beverages to support the government's anti-diabetes campaign. The labeling regulation and tax affects the sales of both U.S. companies and domestic

producers.

IMPORT POLICIES

The 2018 government budget stressed the need to liberalize trade and shift away from being protectionist and inward oriented. In the past, the Sri Lankan government used import substitution policies, and emphasized agricultural self-sufficiency and food security. As a result, Sri Lanka has high taxes on a large number of imports, making them prohibitively expensive. The 2018 budget proposed to revamp the border taxes through a time-bound trade reforms program. As an initial step, the budget lifted the Export Development Board Levy and the Ports and Airport Levy on several items in November 2017.

When there have been balance of payment difficulties, the government has imposed controls on foreign exchange transactions. In December 2015, the Sri Lankan government imposed a cap on vehicle financing. Financing is limited to no more than 50 percent of the value of the vehicle for cars (90 percent of the value for electric vehicles) and 70 percent for buses. This was intended to limit motor vehicle imports in an effort to counteract the increase of vehicle imports which adversely affected Sri Lanka's trade deficit and caused traffic congestion in the capital. Vehicle financing limits are to be relaxed in April 2018.

Import Charges

According to the WTO, Sri Lanka's average applied agricultural tariff in 2015 was 23.7 percent, and its average applied tariff for non-agricultural goods was 6.9 percent. However, Sri Lanka's bound rates are generally much higher, and some 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 the import tariff. In November 2017, Sri Lanka Customs adopted the World Customs Organization's new Harmonized Commodity Description and Coding System in its tariff schedule. There are currently three import tariff bands – 0, 15, and 30 percent. Generally, raw materials are at zero import duty, 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. In November 2017, the government removed certain supplementary taxes on several items. However, supplementary taxes still continue on a wide range of items sharply raising their prices.

One of these supplementary levies is the Export Development Board (EDB) levy, often referred to as a "cess", which 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 on to the import price. With some products, such as biscuits, chocolates, and soap, the levy is charged not on the import price, but on 65 percent of the maximum retail price. In an attempt to rationalize the tariff structure, the 2017 government budget removed the EDB levy on 100 items, including lard, sunflower seed, and wallpaper. The 2018 government budget removed the EDB levy on approximately 250 additional 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 about 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 to 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.

Textile and apparel imports are subject to an all-inclusive tax under the EDB levy. The all-inclusive tax on textiles is Rs. 100 per kg (approximately \$0.65) and on apparel is 15 percent or Rs. 200 (\$1.31) per unit, whichever is higher. An import tariff, VAT, Port and Airport Levy (PAL) and National Building Tax (NBT) are not applicable on these items.

In October 2014, the Sri Lankan government introduced an all-inclusive tax under the Excise Special Provisions Law on cars replacing the VAT, the NBT, the EDB levy, the import tariff, and the PAL. The tax is based on the engine capacity. The excise tax on cars ranges from Rs. 1,750 per cubic meter (CM) for small cars (approximately \$11.25) to Rs. 11,000 per CM (approximately \$70.71) for large vehicles. Electric cars are taxed at lower rates.

Price Controls

Sri Lanka's Consumer Affairs Authority 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, 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.

Pharmaceuticals

In 2014, the Consumer Affairs Authority named pharmaceutical products as “specified goods” thus requiring government approval on any future price increases for pharmaceuticals. In October 2016, the National Medicinal Drugs Authority under the Ministry of Health instituted maximum retail prices for 48 essential drugs. The government introduced price control on contact lenses in February 2017 and on stents in August 2017. The government has not taken action to increase maximum prices of drugs to compensate for rupee depreciation in the past year. The Sri Lankan government promotes local manufacture of pharmaceuticals through buy-back guarantees. The World Health Organization has commended the government of Sri Lanka on its policy to ensure affordable essential medicines through price control.

Import Licenses

Sri Lanka requires import licenses for more than 400 items at the six-digit level of the Harmonized System, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.222 percent of the import price with a minimum fee of Rs. 1,000 (approximately \$6.50) 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 to 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.”

EXPORT POLICIES

Sri Lanka maintains a ban on the export of ferrous scrap, which limits global supply, including in the United States.

GOVERNMENT PROCUREMENT

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement but holds observer status at the WTO Committee on 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.

The practice of accepting unsolicited proposals without competing bids seems to continue. The government is reviewing a plan to award large development projects utilizing a “Swiss Challenge” process where an unsolicited project proposal by a company to the government is put forward for public review and other interested parties are invited to submit counter proposals. The Ministry of Finance has stated it will introduce guidelines for procurement under the “Swiss Challenge” process in order to improve transparency in government tendering.

The government has expressed its intentions to follow international government procurement standards. In response to alleged corruption in government procurement in years past, President Sirisena appointed an independent procurement commission in 2015 to formulate procedures and guidelines for procurement by government institutions. The commission, mandated by an amendment to the constitution, is also responsible for monitoring government procurement. USAID is working with the procurement commission and the Ministry of Finance to streamline government procurement and public-private partnerships for infrastructure projects.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Enforcement of intellectual property rights (IPR) has gradually improved in Sri Lanka, but counterfeit goods (mostly imported) 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. 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, Sri Lanka Customs, and Sri Lanka Police is needed to strengthen Sri Lanka’s IPR regime. It is increasingly important for brand owners to actively engage in brand protection. U.S. Government agencies including the U.S. Patent and Trademark Office, Department of Justice, and the Commercial Law Development Program of the Department of Commerce are providing assistance to Sri Lankan government agencies to improve the IPR regime.

SERVICES BARRIERS

Insurance

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. Branch offices are not permitted. The Sri Lankan government requires all insurance companies to exceed 20 percent of their reinsurance coverage to a state-run insurance fund.

Broadcasting

Sri Lanka 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 \$579) to Rs 150,000 (approximately \$964) per 30-minute episode. Foreign television shows in their original form (without dubbing) are taxed at Rs 100,000 (approximately \$643) per 30-minute episode. Foreign films in their original form are taxed at Rs 200,000 (approximately \$1285). Higher rates apply to repeat telecasts. Foreign commercials are taxed at Rs 500,000 (approximately \$3214) in the first 6 months and at Rs 1,000,000 (approximately \$6428) 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.

Sri Lanka prohibits the sale of public and private land to foreign nationals and to enterprises with foreign equity exceeding 50 percent. Foreign companies engaged in banking, financial, insurance, maritime, aviation, advanced technology, or infrastructure development projects identified and approved as strategic development projects may be exempted from this restriction on a case-by-case basis. This restriction also does not apply to the purchase of condominium properties on or above the fourth floor of a building. The government has proposed liberalization of the rules governing landholding, and new rules are expected to come into effect in April 2018.

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 to repeal it.

BARRIERS TO DIGITAL TRADE

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.

OTHER BARRIERS

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 \$14.3 billion in 2017, a 5.4 percent increase (\$736 million) over 2016. U.S. goods exports to Switzerland were \$21.7 billion, down 4.8 percent (\$1.1 billion) from the previous year. Corresponding U.S. imports from Switzerland were \$36.0 billion, down 1.0 percent. Switzerland was the United States' 17th largest goods export market in 2017.

U.S. exports of services to Switzerland were an estimated \$32.6 billion in 2016 (latest data available) and U.S. imports were \$23.8 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were \$76.6 billion in 2015 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were \$48.9 billion.

U.S. foreign direct investment (FDI) in Switzerland (stock) was \$172.6 billion in 2016 (latest data available), a 10.9 percent increase from 2015. U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance/insurance.

SANITARY AND PHYTOSANITARY BARRIERS

Switzerland generally aligns its sanitary and phytosanitary measures with those of the European Union. 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.

IMPORT POLICIES

Switzerland, along with Norway, Iceland, and Liechtenstein, 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 EU and does not participate in the EU single market through the European Economic Area (EEA) accord. According to the WTO, Switzerland's simple average MFN applied tariff is 34.2 percent for agricultural goods and 1.7 percent for non-agricultural goods.

Agricultural Products

As a result of a highly restrictive agricultural trade regime, Swiss agricultural exports to the United States were triple U.S. agricultural exports to Switzerland, resulting in a U.S. agricultural trade deficit of \$813 million in 2017. U.S. agricultural product 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 U.S. bovine genetics for U.S. bulls remains over 25 times higher than the fee for domestic bulls.

GOVERNMENT PROCUREMENT

Switzerland is a party to the WTO Agreement on Government Procurement (GPA), which covers both cantonal and federal procurement. Because Switzerland has not yet adopted the revised GPA that entered into force in April 2014, U.S. Government procurement obligations with Switzerland are still governed by the 1994 GPA.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Switzerland remained on the Special 301 Watch List for 2017 due to the 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 strong concerns regarding specific difficulties in Switzerland's system of online copyright protection and enforcement and report that Switzerland remains a popular host country for infringing websites. The 2017 Notorious Markets List identified the MovShare Group as well as hosting provider Private Layer, both with ties to Switzerland, as contributing to substantial copyright piracy.

To address these concerns, the Swiss government published draft amendments to its copyright law in December 2015, held public consultations that ended in March 2016, and sent revised draft legislation to parliament in November 2017. The United States continues to encourage the Swiss government to move forward expeditiously with concrete measures that address copyright piracy in an appropriate and effective manner, including through legislation, administrative action, consumer awareness, public education, and voluntary stakeholder initiatives.

BARRIERS TO DIGITAL TRADE

Privacy Shield

Under Swiss law, the transfer of personal data of Swiss citizens outside of Switzerland is limited by Switzerland to countries Switzerland deems adequate under Swiss law or where certain specific criteria are met, such as the use of standard contract clauses or binding corporate rules. In January 2017, the U.S. and Swiss governments concluded the Swiss-United States 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, which is limited to those companies that participate in the Privacy Shield Framework.

SERVICES BARRIERS

Insurance

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.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was \$16.7 billion in 2017, a 26.7 percent increase (\$3.5 billion) over 2016. U.S. goods exports to Taiwan were \$25.8 billion, down 1.1 percent (\$283 million) from the previous year. Corresponding U.S. imports from Taiwan were \$42.5 billion, up 8.3 percent. Taiwan was the United States' 14th largest goods export market in 2017.

U.S. exports of services to Taiwan were an estimated \$9.7 billion in 2017 and U.S. imports were \$8.1 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were \$7.6 billion in 2015 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were \$2.4 billion.

U.S. foreign direct investment (FDI) in Taiwan (stock) was \$16.2 billion in 2016 (latest data available), a 5.7 percent increase from 2015. U.S. direct investment in Taiwan is led by manufacturing, depository institutions, and wholesale trade.

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). Many of the issues discussed below were raised at the 2016 TIFA meeting and in follow-up meetings.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Agricultural Biotechnology

In December 2015, the Taiwan legislature 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. To date, U.S. engagement on this issue appears to have prevented expansion of the ban to government-funded hospitals and the military.

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 it would proceed with implementation and that the measure would not create additional inspection requirements and had nothing to do with any attempt to ban GE soybeans. This draft regulation would bring to four the total number of HS codes for soybeans (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 September 2017, and Taiwan notified an updated version of the proposed amendment in January 2018.

Earlier, in May 2015, Taiwan expanded biotechnology labeling regulations for prepackaged foods, food additives and unpackaged foods to cover highly refined primary products made from GE raw materials, such as soybean oil, corn starch, corn syrup and soy sauce. Secondary products made with GE primary products, such as beverages containing corn syrup, are exempt from the labeling requirement. These GE labeling requirements have driven up demand for imports of non-GE soybeans, as food manufacturers seek to avoid labeling their product as GE.

Cosmetics – Labeling and Other Requirements

In September 2016, the Executive Yuan submitted amendments to Taiwan’s Statute for Control of Cosmetic Hygiene, renamed the Cosmetic Hygiene Control Act, to the Legislative Yuan. Even though the amendments are still pending before the Legislative Yuan, the Taiwan Food and Drug Administration (TFDA) has commenced drafting implementing guidelines that are anticipated to address requirements for product information files (PIF), product notification, good manufacturing practices (GMP), product claims, advertisements, and confidential business information (CBI).

U.S. stakeholders are concerned that these amendments would place an onerous burden on industry by requiring extensive pre-market documentation submissions, specifically in connection with PIF and GMP requirements, which also might contain CBI. U.S. stakeholders also 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 also are 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. This list currently is expected to be released sometime in 2018.

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

Taiwan regulations do not allow products labeled as organic to test positive for any chemical residues. 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

Taiwan 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 and 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 since 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 inspection requirements for certain "sensitive" 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

Taiwan's 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 and other restrictions 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 and to find ways to further reduce the risk of rejected or delayed shipments in the future.

Greening in Potato Products

In September 2017, Taiwan authorities confirmed that they will not admit shipments of ready-to-cook potato products that exhibit any green coloration, as Taiwan has no acceptable threshold for greening on potato products. This action has resulted in unnecessary rejection and detainment of U.S. potato shipments. While green coloration in potatoes is a natural reaction to sunlight, green coloration in potatoes also can be a potential indicator of glycoalkaloids. The United States will continue urging Taiwan authorities to establish a science-based tolerance level for glycoalkaloids to replace Taiwan's current zero tolerance policy for green coloration in potato products.

IMPORT POLICIES

Tariffs

Taiwan 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 agriculture 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 a 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, Taiwan has 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 2014. Although Taiwan has filled its rice CSQ in recent years, including in 2017, Taiwan's CSQ regime remains a concern.

Taiwan also imposed a grade requirement for the simultaneous buy-sell (SBS) quota for rice in 2016, but this requirement was removed in 2017. The United States continues to urge Taiwan to allow specifications to be decided by the buyer and seller.

Distilled Spirits

In Taiwan, *mijiu* rice wine for cooking is taxed at a much lower rate than the rate applied to alcoholic beverages not for cooking. The United States and other trading partners continue to express their strong concerns to the Taiwan authorities that steps should be taken to ensure that the domestic *mijiu* rice wine is not marketed to compete with, or to substitute for, imported alcoholic beverages not for cooking, and that imported alcoholic beverages should not be taxed at a higher rate than like domestically produced alcoholic beverages. The United States also continues to express concerns regarding Taiwan's requirement for expiration date marks on certain alcoholic beverages packaged in paper or plastic containers, in light of the applicable Codex standard, which provides that beverages containing 10 percent alcohol or more by volume shall not be required to list a date of minimum durability regardless of the material of the container.

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. In recent years, for example, Taiwan has bolstered trade secrets protection and enforcement and has enacted legislation to implement an effective patent-linkage system for addressing patent issues expeditiously in connection with applications to market pharmaceutical products. On the other hand, considerable challenges remain in combatting copyright and related infringement, despite Taiwan's commitment to identifying best online enforcement practices through collaboration with U.S. counterparts and industry stakeholders.

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 in those websites. Despite some signs of potential positive momentum, right holders continue to face substantial challenges because of the problems with the overall digital copyright protection environment.

In October 2017, the Executive Yuan approved draft amendments to the Copyright Act and sent them to the Legislative Yuan for review. While the draft amendments make progress in some areas, they also contain 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 unauthorized use of textbooks and copyrighted teaching materials.

SERVICES BARRIERS

Banking Services

Taiwan's banking regulatory body, the Financial Supervisory Commission (FSC), requires that the scope of the primary business areas of foreign bank branches and their subsidiaries cannot overlap. This means, for example, that foreign bank branches and their subsidiaries cannot both provide corporate finance services or derivatives services for large companies.

Securities Services

In December 2012, the FSC announced that it would adopt a differential management approach and 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 would 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 (\$127.5 million) in onshore funds and recruiting a certain number of Taiwan staff. As of September 2017, six offshore funds met these criteria and were entitled to preferential treatment until September 2018, subject to annual review. According to FSC statistics, as of September 2017, 38 of 44 offshore funds in Taiwan did not meet the criteria.

Telecommunications

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

Taiwan prohibits or limits 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 child care.

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.

During the previous administration, Taiwan authorities had proposed amendments to the Statute for Investment by Foreign Nationals to bolster inbound investment, including by eliminating pre-investment approval requirements for investments under \$1 million. The Legislative Yuan did not pass these amendments. At the end of 2017, the Ministry of Economic Affairs was in the process of drafting a new set of proposed amendments 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 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 agreed to explore the possibility of re-establishing 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 Taiwan's health care system. In July 2015, Taiwan's Ministry of Health and Welfare announced that it would extend by an additional two years (*i.e.*, 2015 and 2016) the pilot drug expenditure target (DET)

program. 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, NHIA announced that the DET pilot program would continue through December 31, 2019. The 2017 target budget was set to be NT\$151.1 billion (US\$ 5.04 billion).

In December 2017, Taiwan's Legislative Yuan passed an amendment to the Pharmaceutical Affairs Act establishing a patent-linkage system that should address patent issues expeditiously in connection with applications to market pharmaceutical products. Taiwan is now working on implementing regulations.

Medical Devices

Taiwan is a significant market for U.S. medical device exports. Concerns persist over Taiwan's systems for product license approvals and pricing review mechanisms. Manufacturing facility registration (known as Quality Systems Documentation, or QSD) is mandatory in Taiwan, regardless of whether or not a medical device is already on the market, and re-registration is required every three years. Although TFDA makes available an expedited application process for regulatory review of medical devices, U.S. industry has continued to express concern with documentary requirements that limit the number of manufacturers eligible to benefit from the program. For example, TFDA accepts copies of the U.S. Food and Drug Administration (U.S. FDA) 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 U.S. FDA conducts facility inspections using a risk-based approach, rather than on a set timetable, only a fraction of U.S. manufacturers can qualify for Taiwan's simplified mode of review. Moreover, the simplified product registration mode is only available to applicants who submit a Certificate of Free Sale/Certificate to Foreign Government from the United States and the EU, excluding manufacturers that choose only to seek approval in one of the markets.

Self-pay and balance-billing are two mechanisms that have been introduced by Taiwan authorities to allow Taiwan patients to have the option of choosing medical devices that are not paid in-full by the authorities. At present, 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 NHIA. To expedite code issuance, in April 2014, 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 NHIA completes review of new therapeutic procedures in which the device is used, and U.S. industry has suggested that faster issuance of temporary self-pay codes is 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. 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 effectiveness. In 2014, 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 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.

Customs *De Minimis* Regulations

In May 2017, through newly issued regulations, the Ministry of Finance announced changes to Taiwan's *de minimis* threshold for import duties, which will affect a wide range of shipments imported into Taiwan. As of July 2017, "frequent importers" can receive an exemption of duties when the number of imports does not exceed six shipments within six months, but, effective January 2018, the *de minimis* value for each import dropped from NT \$3,000 (US \$100) to NT \$2,000 (US \$67). There is an exception in the regulations for commercial samples, for which the *de minimis* level will remain at NT \$3,000 without frequency restrictions. U.S. stakeholders are concerned about the potential impact of the new regulations on trade and have urged the Taiwan authorities to clarify certain language contained in those regulations.

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 \$20.4 billion in 2017, a 6.9 percent increase (\$1.3 billion) over 2016. U.S. goods exports to Thailand were \$10.8 billion, up 3.8 percent (\$392 million) from the previous year. Corresponding U.S. imports from Thailand were \$31.2 billion, up 5.8 percent. Thailand was the United States' 26th largest goods export market in 2017.

U.S. exports of services to Thailand were an estimated \$2.7 billion in 2016 (latest data available) and U.S. imports were \$3.3 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$5.3 billion in 2015 (latest data available), while sales of services in the United States by majority Thailand-owned firms were \$147 million.

U.S. foreign direct investment (FDI) in Thailand (stock) was \$11.8 billion in 2016 (latest data available), a 11.1 percent increase from 2015. U.S. direct investment in Thailand is led by manufacturing, mining, and wholesale trade.

TRADE AGREEMENTS

Thailand has a network of preferential trade agreements with trading partners in the Indo-Pacific such as Australia, China, India, Japan, Korea, and New Zealand, which has eroded the competitiveness of U.S. products in the Thai market. Thailand is a party to the region-wide ASEAN agreement and has eliminated tariffs on approximately 99 percent of all goods from ASEAN trading partners. Thailand also is participating in the 16-member Regional Comprehensive Economic Partnership negotiations.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Alcoholic Beverage Labeling Requirements

In 2015, Thailand promulgated a new regulation entitled “The Rules, Procedure and Condition for Labels of Alcoholic Beverages.” Thailand’s Office of Alcohol Control issued a guidance document in September 2015, and the rule entered into force the following month. The Office of Alcohol Control subsequently revised the regulation guidelines in April 2017. At the June 2017 WTO Technical Barriers to Trade (TBT) Committee meeting, Thailand stated that it was reviewing the regulation and might release a revised version, though when that might happen is unknown. Many of Thailand’s trading partners and alcohol importers remain concerned about the measure’s lack of clarity. In particular, the United States continues to seek clarity on when these regulations will be enforced, the enforcement procedures, and the kinds of terms, claims, and statements that businesses can use on labels for alcoholic beverages. The United States will continue to raise our concerns on this measure at the WTO and bilaterally, including in meetings under our Trade and Investment Framework Agreement (TIFA).

Labeling Restrictions on Foods for Infants and Young Children (0-36 months of age)

In December 2015, following repeated requests from the United States, Thailand notified to the WTO its draft Marketing Control of Food for Infant and Young Child and Related Products (“Milk Code”). The Milk Code proposed to restrict the use of trademarked brand names, packaging, symbols -- and educational, promotional, and marketing activities -- for modified milk for infants, follow-up formula for infants and

young children, and supplemental foods for infants. The restrictions would have covered infants and young children up to 36 months of age. In April 2017, the National Legislative Assembly passed a revised version of the Milk Code, which removed the advertising restrictions for products for young children from older than 12 months up to 36 months of age, but maintained other marketing restrictions on foods for young children, as well as other restrictive penalties for violating the Milk Code. In late January 2018, Thailand issued several draft regulations under the Milk Code dealing mainly with advertising and marketing. These regulations were notified to the WTO and Thailand provided 60 days for comment. Throughout this process, the United States has engaged extensively with Thailand both bilaterally and at the WTO and continues to monitor developments, particularly any potential regulations relating to restrictions on products for young children.

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 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 would impede the ability of U.S. facilities to enter the market.

Beef and Beef Products

Thailand banned imports of U.S. uncooked beef products after the detection of BSE in the United States in December 2003. In February 2006, the United States regained market access for U.S. deboned beef exports from cattle less than 30 months of age. On April 6, 2017, Thailand removed age restrictions on deboned beef and granted access for bone-in beef from all cattle regardless of age. Thailand, however, continues to restrict 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 by meeting Thailand's requirement for a systems audit of U.S. beef offal production and health certificate statements. The United States anticipates that Thailand will undertake the audit by mid-2018.

Ractopamine

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 continues to raise this issue with Thailand, including during the TIFA and numerous other bilateral meetings. As a result of the Thai Prime Minister's visit to the United States in October 2017, Thailand proposed to create a Joint Committee to consult with the United States on Thai regulatory actions with the objective to lift the ractopamine ban and open the market to U.S. pork imports. The first formal meeting was held in February 2018, during which Thai authorities stated that the Joint Committee would take no action and had concluded that Thailand's current ractopamine policy was sufficient. In February 2018,

importers were notified that Thailand is considering testing beef and beef products for the presence of ractopamine.

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, which recommend that 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 in the first half of 2018, which is a step towards reopening the market to U.S. turkey. For live poultry, Thailand conducted a September 2016 audit in the United States as a precursor to re-opening the market for day-old chicks and hatching eggs. The approval of the audit allowed the entry of U.S. day-old chicks and hatching eggs in February 2017. However, the ban was re-imposed in May 2017 after HPAI findings were reported in March 2017 in Tennessee. Thailand removed the ban on U.S. day-old chicks and hatching eggs in August 2017. The United States has 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 level of fees was set in October 2016 at 7 baht/kilogram (\$200/metric ton) for imported uncooked meat for food or feed and at 3 baht/kg (\$86/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 our concerns about the apparently discriminatory nature of these fees.

IMPORT POLICIES

Tariffs

About half of Thailand’s MFN tariff schedule includes duties of less than 5 percent, and almost 20 percent of tariff lines are duty free, including for certain chemicals, electronics, industrial machinery, and paper. High tariffs in many sectors, however, continue to pose challenges for U.S. access to the Thai market. While Thailand’s average applied MFN tariff rate was 11.0 percent *ad valorem* in 2015 (latest available WTO data), *ad valorem* tariffs can be as high as 724 percent, and the *ad valorem* equivalent of some specific tariffs (charged mostly on agricultural products) is even higher. Thailand has bound all of its tariffs on agricultural products in its WTO commitments, but only approximately 71.3 percent of its tariff lines on industrial 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 has bound its agricultural tariffs at an average of 38.5 percent *ad valorem*. Its average applied MFN tariff on agricultural products was 30.7 percent in 2015 (latest available WTO data). Applied MFN duties 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 provided to Thailand's free trade agreement partners, including Australia, China, and New Zealand, have negatively impacted the competitiveness of U.S. agricultural products in recent years.

Thailand's average bound tariff for non-agricultural products is 25.5 percent. Thailand's applied tariffs on industrial goods tend to be much lower than its bound rates, averaging 7.7 percent in 2015 (latest available WTO data). 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 also charges tariffs of 10 percent to 30 percent on certain audiovisual products and reception apparatus, while applied duties on consumer electronics typically range from zero to 30 percent. 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.

Nontariff Barriers

Import licenses are required for the import of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, and agricultural items. Imports of certain items not requiring licenses in some cases face extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under other laws. 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 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 feed ingredients, including corn, soybeans, and soybean meal, 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.

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 nontransparent. 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.

Excise Taxes

Regulations implementing the Excise Tax Act (2017) went into effect on September 16, 2017. The revised excise tax increases taxes on seven products, including vehicles, alcohol, cigarettes, non-alcoholic drinks, batteries, crystal glass, and air conditioners. The Excise Tax Act (2017) adopts a mixed tax rate system with both specific and *ad valorem* duties.

Under the Excise Tax Act (2017), *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.

The scope of the specific tax on sugar content includes added sugar and natural sugar, but excludes non-sugar sweeteners. Beverages with over 6 grams of sugar per 100 ml will be subject to the new specific sugar tax with beverages containing higher sugar levels carrying a larger tax burden. The excise tax department is encouraging the beverage industry to reformulate their products by including a two-year period of lower tax rates for sugary beverages. After two years, the specific tax on sugar content is set to increase.

Beverages subject to the new excise sugar tax are: (1) artificial mineral water, soda water, and carbonated soft drinks without sugar or other sweeteners and without flavor; (2) mineral water and carbonated soft drinks with added sugar or other sweeteners or flavors; and other nonalcoholic beverages; (3) fruit and vegetable juices; (4) coffee and tea; (5) energy drinks; and (6) beverage concentrates to be used with beverage vending machines for distribution at retail areas. Thailand is considering changes that could further increase the excise tax burden on imported products including non-alcoholic and alcoholic beverages.

Customs Barriers

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, and U.S. companies continue to report serious 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 caused serious concerns by Thai trading partners for many years. Ostensibly to address these problems, at least in part, Thailand’s new Customs Act entered into force on November 13, 2017. The Act removes the Customs Department Director General’s authority and discretion to increase the customs value of imports, and 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 fully address our serious concerns on this issue.

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 stakeholders also have expressed concern about Thailand’s inconsistent

application of the transaction valuation methodology and has reported the repeated use of arbitrary or fictitious values by the Customs Department.

The U.S. Government and U.S. stakeholders also continue to urge the Customs Department to implement overdue reforms, including publishing proposals for changes in customs laws and regulations, and providing public notice and allowing sufficient time for comments on these proposals.

GOVERNMENT PROCUREMENT

The Prime Minister's Procurement Regulations, which govern public sector procurement, came into effect in 1992 and have since been revised several times. These regulations established a preference program in which products certified by the Ministry of Industry as supplied from domestic suppliers have an automatic 7 percent advantage over foreign bidders in evaluations in the initial bid round. Domestic suppliers in the preference program include subsidiaries of U.S. firms registered as Thai companies.

Thailand is not a member of the WTO Agreement on Government Procurement, but it became an observer in 2015.

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 additional income tax exemptions to promote technological innovation. The Thai government also operates certain programs, information about which is not covered in its subsidy notification. These include 200-percent tax deductions for business expenses related to research and development, job training, and special measures/equipment for disabled persons.

In late 2016 and early 2017, a new rice subsidy program was announced as a means of halting the decline of domestic rice prices. The program set a target of three million metric tons of paddy rice. Under the 2016-2017 pledging program, the Thai government provided subsidies on the storage costs of 1,500 baht per metric ton (\$45/MT) and direct payment of 1,500 to 2,000 baht per metric ton (\$45-\$61/MT) for certain harvest and postharvest handling costs (a maximum of 12,000 baht (\$364) per farm household). The Bank for Agriculture and Agricultural Cooperatives, which managed the pledging program, received interest rate compensation from the Thai government.

The Thai government announced a plan to implement a liquefied petroleum gas (LPG) subsidy in late 2017. The plan provides for the government to subsidize LPG expenses for low-income individuals via state welfare cards. In the future, the government may elect to add limited funds to these welfare cards for residential electricity expenses.

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. The U.S. Government has been closely engaging with Thailand on improving intellectual property rights (IPR) protection and enforcement as part of the bilateral U.S.-Thailand Trade and Investment Framework Agreement. This engagement has yielded results on resolving U.S. concerns across a range of issues, including on enforcement of all IPR, as well as issues regarding patents and pharmaceuticals, trademarks, and copyrights.

However, many concerns with IPR protection and enforcement remain. While Thailand has taken steps to address longstanding concerns, piracy and counterfeiting remains widespread in physical marketplaces and online. The United States continues to urge Thailand to take enforcement action against widespread piracy and counterfeiting in the country, and to impose sentences that would deter potential offenders.

Other U.S. concerns include widespread use of unlicensed software in the public and private sectors, extensive cable and satellite signal theft, a lack of adequate protection against the circumvention of technological protection measures, and a lack of clarity in the operation of notice-and-takedown procedures with respect to infringing content online. 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 Trade Barriers

The Motion Picture and Video Act gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

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 its provisional 1997 WTO commitments. However, Thailand has not revised its WTO schedule, as it committed to do, 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, but the criteria by which "foreign dominance" is determined remain unclear.

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.

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 bank 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. Changes in major shareholders must also be for prudential reasons, with emphasis on good governance and risk management, pursuant to the Basel Core Principles.

Foreign bank branches and subsidiaries can perform all types of financial activities under the concept of “universal banking,” similar to local banks. Subsidiaries are limited to 20 branches and 20 off-premise ATMs across Thailand, and foreign bank branches may open only three branches or off-premise ATMs in Thailand without having to meet additional capital requirements.

Since 2013, Thailand has required that all domestic debit transactions on cards issued domestically be processed in Thailand. As a result, suppliers must establish a local presence and build processing facilities in Thailand to process debit transactions.

Shares held by foreign shareholders in life and non-life insurance companies are limited 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 these restrictions somewhat by authorizing the Office of Insurance Commission (OIC) to allow a company to increase the number of shares held by foreign shareholders to up to 49 percent and the seats held by foreign directors to up to one half of the board if the company meets certain criteria relating to the improvement of 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 allow a company to have foreign shareholders exceeding 49 percent or foreign directors making up more than one-half of the board or both.

In December 2016, the Bank of Thailand began allowing limited use of financial technology products for biometrics identification and allowing block chain applications to issue letters of guarantee to facilitate business transactions (such as the purchase of goods) and to facilitate cross-border transfers of funds. In 2017, the Thai Securities and Exchange Commission (SEC) began exploring new opportunities for financial technology in the securities and derivatives business, including block chains in securities clearing houses, depositories, and registrars. The SEC may amend the definitions of several securities businesses and lift licensing requirements for some activities in the future. These developments, while showing progress in the Thai financial authorities and regulators’ move to allow access to the industry, still show limitation do not allow businesses to have access to the full range of financial technologies currently available in the global market.

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.

Postal and Express Delivery Services

Private express delivery companies must pay postal "fines" 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.

INVESTMENT BARRIERS

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) needs to 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.

BARRIERS TO DIGITAL TRADE

Technology

The Ministry of Digital Economy and Society is currently reviewing the draft National Cybersecurity Bill, which is designed to strengthen the cybersecurity capabilities of government agencies and to provide appropriate breach notification procedures. The draft bill raises concerns, however, because it would give the Office of the National Cybersecurity Committee broad powers to access confidential and sensitive information without sufficient protections to circumscribe such access or to appeal the Committee's decisions. Such intrusive authority can undermine consumer and business confidence in online commerce, potentially damaging cross-border digital trade.

Internet Services

In 2017, Thailand's national broadcasting and telecom regulator stated its intention to finalize a new regulatory framework for "Over the Top" (OTT) services -- the delivery of film and TV content over the internet either for free or for a charge -- which to date have been allowed to operate without a license. The intent of the policy is to subject OTT services to regulations similar to those imposed on

telecommunications service providers, including a requirement to obtain and pay for operating licenses. Industry and the U.S. Government have raised serious concerns with the proposed regulatory framework, which would needlessly burden OTT services that can often be provided on a cross-border basis without a local presence.

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 the Committee finds disseminating computer data that violates public order and good order, as well as intellectual property. Over the past year, the Thai government has greatly increased the number of social media posts it has blocked, yet the amendments afford no mechanism for appealing or otherwise challenging 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.

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.

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 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.

The National Legislative Assembly, Thailand's unicameral legislature, unanimously approved legislation creating the Criminal Court for Corruption and Malfeasance Cases on June 16, 2016 to expand the reach of prosecution of corruption offenses to the private sector and to resolve corruption cases more quickly. The Court, established in October 2016, was formed by making a division of Thailand's Criminal Court that had already been handling corruption and malfeasance cases into a separate court, with all corruption cases falling under its purview.

TUNISIA

TRADE SUMMARY

The U.S. goods trade surplus with Tunisia was \$89 million in 2017, a 34.2 percent decrease (\$46 million) over 2016. U.S. goods exports to Tunisia were \$551 million, up 4.5 percent (\$24 million) from the previous year. Corresponding U.S. imports from Tunisia were \$462 million, up 17.9 percent. Tunisia was the United States' 92nd largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Tunisia (stock) was \$294 million in 2016 (latest data available), a 8.9 percent increase from 2015.

TRADE AGREEMENTS

Tunisia has had an association agreement with the European Union (EU) covering the trade of goods since 1998. Tunisia also grants tariff preferences for imported goods from European Free Trade Association members, Turkey, and several countries in North Africa. Tunisia has trade agreements with approximately 60 countries, the most recent being an agreement signed with Iran in 2008. Tunisia began negotiations with the EU in April 2016 on a Deep and Comprehensive Free Trade Agreement that would go beyond the current association agreement to liberalize trade in agriculture and services and include disciplines on labor and the environment.

SANITARY AND PHYTOSANITARY BARRIERS

Tunisia administers strict import requirements for meat, poultry, and egg products, including on contaminants. Tunisia also does not accept the Food Safety and Inspection Service's form 9060-5, for meat and poultry products, and 9060-5EP, for egg products. These issues were discussed at the 2017 Trade and Investment Framework Agreement (TIFA) meeting and in March 2017, Tunisia informed the United States of Tunisia's requirements for health certificates for meat, poultry and egg products.

IMPORT POLICIES

Tariffs

Tunisia introduced a tariff schedule on January 1, 2016 that applied tariffs of zero percent for raw materials, energy, intermediate goods, and equipment, and 20 percent for manufactured products. Agricultural goods were subject to customs tariffs ranging from a zero to 36 percent, with most agricultural imports at the high end of that range. This tariff schedule reflects the country's close alignment of its system to that of its main trading partner, the EU. Tunisia has significantly reduced its applied tariffs over the past decade: the average rate fell from about 45 percent in 2006 to 14 percent in 2016.

Customs Procedures

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 conducted primarily manually by reviewing large volumes of paper documents. However, the average time that goods spend in customs processing has dropped. In February of 2016, Tunisia ratified the WTO Trade Facilitation Agreement (TFA), but it has not yet officially notified the WTO of its acceptance of TFA.

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. There are also some quotas, especially for imported consumer goods that compete with local products. Importers 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.

In October 2017, a Tunisia customs notice that required importers of merchandise originating in the United States to provide the U.S. Customs and Border Protection (CBP) export declaration certificate associated with a particular shipment imposed an additional difficulty on importers.

In October 2017, the Bank of Tunisia ordered banks to cease issuing letters of credit to importers of goods deemed non-essential.

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports into the country. Official government policy forbids discrimination against foreign suppliers, but companies complain that the Central Pharmacy discriminates based on price, which tends to favor locally produced generics.

GOVERNMENT PROCUREMENT

Tunisia is neither a party to, nor an observer of, the WTO Government Procurement Agreement (despite its declared interest in becoming an observer). 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. The government intends that all public procurement operations be conducted electronically via a bidding platform called Tunisia Online E-Procurement System (TUNEPS). The government has decreed that bids be evaluated on the basis of “the lowest bid that meets the specifications.” However, the government decree excludes procurement by the Ministry of Defense, Ministry of Interior, the three major state banks, and possibly other ministries if the procurement relates to security matters.

U.S. wheat exports are effectively blocked from state procurement due to narrow requirements dictated in a Book of Specifications in use by Tunisia.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The most commonly reported trade-related intellectual property rights (IPR) infringement is the sale of counterfeit and pirated goods in Tunisia. Cross-border smuggling of counterfeit and pirated items remains a problem. Though customs officials have the authority to inspect and seize counterfeit trademark and pirated copyright goods, the officials often lack the ability to identify such goods. The United States will continue to engage with Tunisia on IPR-related matters.

SERVICES BARRIERS

Telecommunications

Most Internet service providers can access the Internet only via the majority government-owned Tunisie Telecom, which serves as the sole manager of the country’s fiber-optic network. Two private telecommunications operators were granted permission in 2013 to develop the first privately owned submarine communications cable to serve Tunisia.

INVESTMENT BARRIERS

Entering the Tunisian market remains difficult for foreign investors. Foreign investment is limited to 49 percent in many sectors, and the process of establishing an investment 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.

The family-owned structure of many Tunisian businesses makes it difficult for U.S. companies to establish joint ventures. Local partners traditionally have been resistant to ceding management control to foreign investors, and foreign firms often have found it difficult to change local distributors or agents after entering into contractual relationships. In addition, 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 that is intended to facilitate increased foreign investment into Tunisia took effect. Among other things, the law calls for the government to issue a "negative list" specifying the sectors in which investors are required to acquire investment authorizations before making an investment. The list was due to be issued by the end of September 2017; however, as of March 2018, it still had not been issued.

BARRIERS TO DIGITAL TRADE

The Tunisian Dinar is a non-convertible currency, so Tunisian credit and debit cards cannot be used for international electronic transactions. 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. Foreign currency accounts held by foreign investors and resident exporters face no restrictions. Individuals and companies can use "Digital Technology Charge Cards" to make international purchases of certain digital products and services. Individual users are limited to about \$400 in annual purchases, while companies are allotted about \$4,000.

OTHER BARRIERS

Although the government of Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

Due to foreign exchange restrictions, 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. This remains a source of confusion and difficulty for some U.S. companies.

TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was \$330 million in 2017, a 75.4 percent decrease (\$1.0 billion) over 2016. U.S. goods exports to Turkey were \$9.8 billion, up 3.9 percent (\$363 million) from the previous year. Corresponding U.S. imports from Turkey were \$9.4 billion, up 17.1 percent. Turkey was the United States' 28th largest goods export market in 2017.

U.S. exports of services to Turkey were an estimated \$3.1 billion in 2016 (latest data available) and U.S. imports were \$1.9 billion. Sales of services in Turkey by majority U.S.-owned affiliates were \$5.1 billion in 2015 (latest data available), while sales of services in the United States by majority Turkey-owned firms were \$75 million.

U.S. foreign direct investment (FDI) in Turkey (stock) was \$3.1 billion in 2016 (latest data available), a 1.7 percent increase from 2015. U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and prof., scientific, and tech. services.

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. On March 16, 2015, the Turkish Medicine and Medical Devices Institution announced that the duration of GMP certificate validity would be extended from three years to four and a half years.

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,

including allowing genetics from bulls on a country's Top 100 TPI (Total Performance Index) bull list. 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.

The United States has repeatedly raised concerns with Turkish officials, including at senior levels, about specific provisions of the 2010 Biosafety Law and its implementing regulations.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

In addition to requiring mandatory health warnings on labels of products derived from agricultural biotechnology, the 2010 Biosafety Law also negated the approvals of agricultural biotechnology products granted under Turkey's previous biotechnology regulation. This initially had the effect of stopping all agricultural trade with the United States in products derived from agricultural biotechnology, primarily soy and corn products.

Although it 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. Turkey also has not informed its trading partners before implementing various regulatory controls for biotechnology traits. Trading partners often learn of changes only when products are blocked at Turkish ports.

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.

The Biosafety Board established under the Biosafety Law thus far has rejected applications submitted by Turkish importers for approval of a number of corn and soybean biotechnology traits and has generally operated in a nontransparent manner. 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. Six applications are still undergoing risk and socio-economic assessments. The Biosafety Board has not provided any scientific justification for approvals or rejections.

On May 29, 2014, Turkey published an amendment to the “Regulation on GMO and Its Product” that defines “contamination” as the presence of more than 0.9 percent of product made with unapproved biotechnology traits in the content of a cargo shipment. Biotechnology trait presence below 0.9 percent does not require labeling. If the cargo tests positive for the presence of an unapproved trait at any level, the

cargo is rejected and cannot be used for feed or food. There is an exception to the threshold for unapproved traits used in feed - traits with pending applications are allowed to be present up to a 0.1 percent threshold. If the cargo is meant for use as food, however, currently there is no allowable limit for the presence of biotechnology traits.

Turkey has also imposed onerous biotechnology-focused testing requirements for certain U.S. food and feed imports. Turkish authorities in 2013 began requiring 100 percent testing for any biotechnology content in U.S. wheat imports following a single detection in Oregon 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 imports.

In October 2014, the Turkish government also implemented a biotechnology-focused 100 percent testing regime for all imports of animal feed. Since June 2016, however, Turkey's sampling and testing frequency for both food and feed has depended on: a) whether the shipment is accompanied by a declaration issued by the competent authority of the loading or origin country stating whether the food or feed in question includes products derived from agricultural biotechnology; and b) if such a certificate is supplied, on the shipment's particular content. Commodities declared as not containing products derived from agricultural biotechnology are subject to a lower testing frequency. Commodity shipments from countries known to export products derived from agricultural biotechnology, and lacking a biotechnology-free declaration, are subjected to analysis at the rate of 100 percent.

Also in October 2014, Turkey began requiring certifications from the country of origin that products exported to Turkey have not been produced using enzymes or microorganisms derived from agricultural biotechnology. No government in the world regulates the use of such enzymes or microorganisms; however, many products that may have been produced using them, ranging from wine and cheese to breads, pet food, and livestock nutritional supplements, subsequently have been rejected at Turkish ports for lack of the required certifications. On May 5, 2015, Turkey excluded enzymes from the scope of the Biosafety Law and thus from the certification requirement. However, Turkey continues to require government-issued certifications in the case of microorganisms. U.S. Government officials have continued to raise concerns over this issue, most recently at the 2017 meeting of the bilateral Trade and Investment Council.

Food Safety

Turkey's efforts to conform its national food safety laws to EU measures have been inconsistent, often resulting in non-transparent regulatory requirements and unpredictable enforcement actions. Turkish authorities frequently implement changes to requirements without notification or consultation with trading partners, thereby increasing costs to exporters. However, even greater harmonization of Turkish requirements to EU requirements could effectively 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.

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.

Animal Health

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.

Turkey is an important transit point for U.S. poultry flowing 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).

IMPORT POLICIES

Tariffs

In accordance with its customs union agreement with the 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 average applied tariff rate is 42.7 percent for agricultural products and 5.5 percent for non-agricultural products, while its WTO bound rates are 61 percent and 17 percent, respectively. Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 19.5 percent to 135.9 percent, and poultry tariffs are 65 percent. On June 27, 2017, the Turkish government reduced the import tariff on wheat, barley, and corn from 130 percent to 45 percent, 35 percent, and 25 percent, respectively.

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.

Taxes

In January 2014, Turkey raised its special consumption tax on all motor vehicles to between 45 percent and 145 percent based on engine size. Previously, the rate range was 37 percent to 130 percent. This tax has a disproportionate effect on automobiles imported from the United States.

Import Licenses and Other Restrictions

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. 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 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 imported from abroad must 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.

Despite legislation to privatize the natural gas sector via a phased transfer of 80 percent of gas purchase contracts to the private sector by the end of 2009, Turkey's state pipeline company, BOTAS, still controls over 80 percent of the gas import market.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement (GPA) but has been an observer of the GPA 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.

In February 2014, the Turkish parliament adopted an Omnibus Bill that gives civilian government ministries 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.

SUBSIDIES

Turkey employs a number of incentives related to exports. Significant subsidies appear to be granted in 16 agricultural or processed agricultural product categories. These subsidies take the form of tax credits and provisions for debt forgiveness, and are paid for by taxes on exports of primary products such as hazelnuts and leather. Additionally, the Turkish Grain Board generally purchases domestic wheat at intervention prices (above world prices) and then sells it at world prices to Turkish flour, biscuit, and pasta manufacturers for use in exports. U.S. exporters have expressed serious concerns about the adverse impact these Turkish wheat flour exports have had on their sales in certain third country markets.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Turkey remained on the Watch List in the 2017 Special 301 Report.

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. According to some reports, Turkish law enforcement and other authorities' efforts to improve intellectual property rights (IPR) enforcement have decreased in the past year, and the judicial system as a whole - including judges, prosecutors, and police - has increasingly failed to deter IPR-related crime adequately. For the first time in Turkish history, industrial property rights are covered under a single law—the Industrial Property Law No.6769, which entered into force in January 2017. The law brings together a series of decrees into a unified and modernized legal structure. It also greatly increases the capacity of the Turkish Patent Office and improves the legal framework for technology commercialization and transfer. However, IPR enforcement in Turkey still suffers from a lack of awareness and training among judges and police officers, as well as a lack of prioritization among government bodies of efforts to combat IPR crimes.

SERVICES BARRIERS

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

Data Localization

Localization requirements found in various Turkish laws and regulations can restrict the free flow of data and can negatively affect cloud-based services, potentially inhibiting the further development and expansion in Turkey of creative electronic services (e.g., electronic invoicing, electronic general assembly, executive board meetings, electronic bookkeeping, new electronic payment, and electronic money services).

Turkey's "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. Similarly, Turkey's implementation of Article 23 of its "Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions" requires information systems used by financial firms for keeping documents and records to be located within Turkey. Many U.S. firms view these requirements as unworkable given their business models. The Article 23 requirement 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 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 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. On several occasions, BTK has used its authority to block access to various Internet-based service providers, including U.S.-based suppliers. Internet service providers face potential liability under broad and vague standards for content posted by their users that is blasphemous, discriminatory, or insulting. This potential liability makes it difficult for U.S. companies to operate in Turkey. The Turkish government also has slowed down Internet connectivity on occasion, which especially hurts industry-leading U.S. technology companies.

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. Many 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. Continued turmoil within Turkish government institutions in the wake of the July 2016 attempted coup appears to have multiplied the opportunities for public corruption, especially in government tenders, making it more difficult for foreign firms to compete fairly.

Pharmaceuticals – Restrictions on Reimbursement and Official Exchange Rate for Government Purchases

U.S. pharmaceutical companies have complained that their business operations in Turkey are being 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 February 2017, the government released a list of 54 pharmaceutical products for which government reimbursement would be denied by February 2018 if they were not manufactured in Turkey. Since government reimbursement covers the vast majority of pharmaceutical products sold in Turkey, denying reimbursement would effectively cut off the ability of foreign producers to market their products in Turkey if they chose not to manufacture them locally. The government has also indicated it plans additional tranches of products that will be 'de-listed' in the near future.

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.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was \$15.7 billion in 2017, a 17.6 percent decrease (\$3.3 billion) over 2016. U.S. goods exports to United Arab Emirates were \$20.0 billion, down 10.7 percent (\$2.4 billion) from the previous year. Corresponding U.S. imports from United Arab Emirates were \$4.3 billion, up 28.3 percent. United Arab Emirates was the United States' 18th largest goods export market in 2017.

Sales of services in United Arab Emirates by majority U.S.-owned affiliates were \$8.6 billion in 2015 (latest data available), while sales of services in the United States by majority United Arab Emirates-owned firms were \$2.3 billion.

U.S. foreign direct investment (FDI) in United Arab Emirates (stock) was \$13.4 billion in 2016 (latest data available), a 14.5 percent decrease from 2015.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In 2017, the UAE implemented technical regulations for a range of products, including jewelry, solar photovoltaic systems, electric cables, unleaded gasoline, unmanned aerial systems, and emissions standards for vehicles. The Emirates Authority for Standardization and Metrology (ESMA) created an electronic search engine to facilitate compliance with requirements that ban the import, registration and insurance of vehicles that are dismantled, water or flood damaged, fire damaged, junk-titled, crushed, non-repairable, or have safety defects. UAE authorities, in cooperation with ESMA, also issued requirements for tire manufacturers and local distributors, retail shops, and showrooms to provide radio frequency identification labels that are registered in a central database. In addition, Dubai Municipality's Central Laboratory launched a new service to verify that halal cosmetic and personal care products, such as lipstick, creams, and soaps are free from ingredients or manufacturing processes that use pork fat and its derivatives.

UAE Cabinet Resolution No. 10 of April 2017 limits permissible levels of certain hazardous materials (including lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and phthalate) to less than 0.1 percent for several product categories, including: electrical and electronic devices; household appliances; IT and telecommunication equipment; consumer equipment; lighting equipment; electrical and electronic tools; toys, leisure and sport equipment; medical devices; and various monitoring and control instruments such as industrial monitoring, and automatic dispensers. UAE Cabinet Resolution No. 12 of May 2017 requires products that are marketed as "environmentally friendly" carry the Emirati Environmental Mark.

Halal

The Ministry of Climate Change and Environment also transitioned its supervision of halal certification to ESMA. As a part of this transition, all existing halal certifiers were required to complete a lengthy re-accreditation process to continue certifying halal products destined for the UAE. This move delisted all U.S. certification bodies that were previously permitted to certify to UAE halal standards, severely limiting access for U.S. companies. While three U.S. halal certifiers have regained UAE approval, U.S. agricultural producers continue to face restrictions in their ability to export halal products to the country.

Energy Drinks

In 2016, the six Member States of the Gulf Cooperation Council (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 statements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States.

Conformity Assessment 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

GCC Member States notified WTO Members in April of 2017 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 industry have also raised concerns that the measure is inconsistent with relevant international standards for cosmetics’ product safety.

Sanitary and Phytosanitary Barriers

Even though 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), has been categorized as a negligible risk country by the OIE since 2013, and has not detected any cases of BSE in over a decade, the UAE continues to ban imports of U.S. live cattle after a detection of BSE in the United States in 2004. The United States continues to request that the UAE remove this restriction and allow for the importation of U.S. live cattle.

In November 2016, the GCC announced that it would implement a “GCC Guide for Control on Imported Foods” in 2017. The United States has raised concerns about the Guide, particularly regarding the GCC’s failure to offer a scientific justification 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. The United States has requested that the GCC delay implementation of the Guide until experts are able to address these concerns. As of December 2017, GCC Member States have indefinitely suspended implementation of the Guide.

IMPORT POLICIES

Tariffs

As a member of the GCC, the 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.

Excise Taxes and Value-Added Tax

Although GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks, energy drinks, and tobacco products, implementation varies by Member State. U.S. beverage producers report 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.

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 issued Federal Law No. 8 in August 2017. It introduced a five percent value added tax (VAT), effective January 1, 2018, on goods and services. According to regulations, exports will be eligible for tax reimbursements on purchases (“zero-rated”), while imports will be 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 will also be “zero-rated”: education, healthcare, initial residential sales, international passenger transport, and life insurance. In addition, the sale of airplanes, ships, and trains, and services provided by companies that contract or participate in international events in the UAE will be zero-rated. The following items will be tax exempt: local passenger transport, residential leases, bank interest income, and residential real estate revenue after initial sale. VAT will be collected on imports transiting the UAE and destined for other GCC countries that have begun implementing the VAT; the tax revenues will then be transferred to the respective national tax authorities.

Import Prohibitions and Licenses

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. In addition, the entry of goods manufactured in Israel is prohibited.

Import Licenses

Only licensed firms are permitted to engage in importation, and only UAE-registered companies, which are required to have at least 51 percent UAE ownership, are able to obtain licenses. 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 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.

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.

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.

The UAE is not a signatory to, nor an observer of, the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Actions taken in 2017 by the Ministry of Health, in conjunction with the Ministry of Economy, allowed domestic manufacture of generic versions of pharmaceutical products still under patent protection in the United States, claiming that previous government measures providing country-of-origin patent protection for pharmaceutical products were no longer valid. The UAE government has failed to provide clarifications or assurances, 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. Industry groups continue to raise concerns that officials in Dubai and Ajman continue to allow the re-export and transshipment of many counterfeit products, rather than seizing and destroying the goods, even though federal UAE officials have asserted that a 2014 law on commercial fraud requires the destruction of counterfeit goods while still allowing defective or substandard goods to be returned to their point of origin. U.S. rights holders also continue to raise concerns over the lack of intellectual property rights (IPR) prosecutions; a lack of permanent staff solely dedicated to counterfeit enforcement; a lack of enforcement action without specific, written complaints from rights holders; and a lack of transparency and available information related to UAE raids and seizures of pirated and counterfeit goods. The UAE also has yet to establish collecting societies for certain types of copyright royalties, which has been a longstanding

concern. The 2017 Notorious Markets List also included two physical marketplaces in the UAE for hosting over 5,000 stores selling a broad range of counterfeit goods. In addition to serving the UAE market, these marketplaces also serve as gateways to distribute counterfeit goods to other markets in the Middle East, North Africa, and Europe.

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

BARRIERS TO DIGITAL TRADE

Internet Services

The UAE has severely restricted the provision of Internet-based communications services, including Voice over Internet Protocol (VoIP) services, except those offered by or in partnership with a licensed telecommunications operator. This restriction constitutes a significant market access barrier for foreign suppliers of “Over-the-Top” (OTT) services. In September 2017, the Telecommunication Regulatory Authority announced plans to allow certain service suppliers to offer VoIP services, but, in practice, the state-owned telecommunications service providers have periodically slowed down foreign VoIP services.

The UAE has established a restrictive regulatory framework for transportation services working through mobile applications. All app-based transportation services must be licensed, and such licenses are restricted in number, causing poor quality of service and high prices. App-based transportation services are also required to charge 30 percent more than traditional taxis, and must share data in real time with the UAE government. Such restrictions limit the value that these services are able to provide to consumers, and undermine their competitiveness relative to local alternatives.

SERVICES BARRIERS

Airline Subsidies

In 2015, three U.S. air carriers approached U.S. officials alleging that the UAE government provides market-distorting subsidies to its airlines. The U.S. Government takes these claims seriously and has solicited information from the diverse range of aviation industry stakeholders regarding these allegations and related policy implications. The Governments are working to reach an understanding to address the concerns raised by all U.S. stakeholders.

Agent and Distributor Rules

Federal Law No. 18 of 1981, as amended by 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.

Telecommunications

The UAE government maintains majority ownership in Etisalat and du – the only two currently operating telecommunications companies and the only Internet service providers and mobile phone operators in the UAE. In June 2015, the UAE allowed foreign investors to own up to 20 percent of the largest telecommunications operator, Etisalat. For du, though foreign equity is allowed up to one hundred percent, its actual foreign ownership currently accounts for less than one percent. A majority of the equity in du is held by two of the UAE’s sovereign funds, Emirates Investments Authority (EIA) and Mubadala Development Company, which hold 40 percent and 20 percent of du, respectively. Particularly in concert with the UAE’s restrictions on OTT services (*see the section on “Barriers to Digital Trade”*), the UAE telecommunication market is severely restricted to foreign competition and offers few options to consumers.

Transportation

Federal Law No. 9 of 2011 restricts licenses for all commercial transport vehicles to UAE citizens, including those used by couriers, taxis, or limousines. Ride-sharing services such as Uber have been banned in some of the individual emirates.

Insurance

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 in foreign equity limits in domestic insurance companies.

The emirate of Abu Dhabi limits insurance coverage for infrastructure, construction projects, and companies under the Abu Dhabi National Oil Company to Abu Dhabi-based national insurance companies.

INVESTMENT BARRIERS

The UAE generally does not provide national treatment for foreign investors, and foreign ownership of land is restricted. The UAE 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 from forcing customers to refrain from dealing with competing entities. However, the resolution exempts establishments in which federal or local governments own at least 50 percent. Generally, state-owned enterprises are key components of the UAE economic model and are perceived to be favored in legal disputes with foreign companies brought before the local judiciary.

In 2017, some government entities issued resolutions that provide preferential treatment for national investors. Ministry of Economy Resolution No. 3 of January 2017 updated the fees charged for various services, with those applicable to foreign companies being four to twelve 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.

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.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was \$809 million in 2017, a 62.0 percent increase (\$310 million) over 2016. U.S. goods exports to Ukraine were \$1.8 billion, up 69.5 percent (\$749 million) from the previous year. Corresponding U.S. imports from Ukraine were \$1.0 billion, up 75.9 percent. Ukraine was the United States' 63rd largest goods export market in 2017.

U.S. foreign direct investment (FDI) in Ukraine (stock) was \$618 million in 2016 (latest data available), a 2.4 percent decrease from 2015.

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, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Trade and Investment Council (TIC), which addresses a wide range of trade and investment issues, including market access, intellectual property rights (IPR) protection, value-added tax (VAT) issues, and other specific trade and investment concerns. 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 Kyiv, Ukraine, on October 3, 2017. In this meeting, the delegations discussed measures to enhance bilateral trade and investment opportunities beneficial to both countries and to eliminate barriers to increased trade and investment. Topics included IPR, trade in agricultural goods, energy reform, simplification of regulations including customs procedures, tax issues, and privatization of state-owned enterprises.

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 European Union (EU), Ukraine is moving to “achieve conformity with” EU technical regulations and the EU’s regulatory regime (including the EU’s conformity assessment procedures). Some industry stakeholders have expressed concerns that this process may lead to Ukraine adopting 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 negatively impacted if Ukraine adopts EU regional standards as a basis for its technical regulations instead of international standards.

¹⁷ See the EU Technical Barriers to Trade entries regarding Chemicals: Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH).

Sanitary and Phytosanitary Barriers

Establishment Lists

Although Ukraine accepts shipments of U.S. produced beef and pork pursuant to bilateral U.S.-Ukraine veterinary certificates, it only allows U.S. poultry imports from facilities that are already approved to ship to the EU. Following interventions by U.S. officials, Ukraine recently agreed to accept products from 19 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. The Law of Ukraine No. 2042 “On State Control over Food Products, Feeds, Animal Byproducts, Animal Health and Wellbeing” (May 18, 2017), which enters into force on April 4, 2018, establishes even tougher restrictions, limiting access for historic facilities to only those whose products have entered Ukraine within the last five-year period.

Food Safety Standards

Ukrainian law recognizes three categories of food safety regulations, namely domestic, international, and EU standards. Domestic Ukrainian standards are prioritized but if none exist, international standards are used. 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, 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.

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. In 2017, U.S. exporters faced significant delays in receiving registration approvals for the import of certain defense technology and agricultural machinery equipment to Ukraine. The Commerce Department raised these challenges during bilateral meetings in Washington and Kyiv with MEDT officials in late 2017.

International Certificate Requirement

Under Ukrainian Law No. 1602 all importers of food products are required to present an “international certificate or other document issued by the competent authority of the country of origin.” In 2017, Ukraine adopted law No. 2042, which removed certificate requirements for processed products of plant origin. However, Ukraine still requires international certificates for processed products of animal origin and for processed products containing ingredients of animal origin exceeding one percent of volume. For many processed products that contain ingredients of both animal and plant origin, U.S. competent authorities do not issue certificates. Because Ukraine does not accept alternative certifications, such as producer certifications of safety and wholesomeness or state issued certificates of free sale, this requirement potentially excludes U.S. exports of some processed foods from the Ukrainian market.

Export of Certain Animal Products without Bilateral Certificates

Imports 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 it has not been adopted and market access remains curtailed.

Agricultural Biotechnology

The regulatory system in Ukraine for genetically engineered (GE) products is still not fully developed, as Ukraine lacks an effective system for the registration of GE products. There is a system in place to register GE plant varieties or animal breeds, but it is so cumbersome the system has never been utilized.

In 2014, the Government of 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 absence of GE material must be confirmed according to existing regulations. However, 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”). The legislation’s impact has been limited by a lack of implementing regulations. Only two GE products, a soybean meal for feed purposes (derived from herbicide tolerant soybeans) and one veterinary drug, have been approved. Import of other GE products is nearly impossible.

Of additional concern is Ukraine’s commitment under its DCFTA with the EU. If Ukraine shapes its biotechnology policy to conform with the EU’s, it could result in additional barriers to market access for U.S. exports of biotechnology products.¹⁸

IMPORT POLICIES

Tariffs and Customs Issues

U.S. exports are subject to Ukraine’s most-favored nation (MFN) applied tariff rate. All of Ukraine’s tariff lines are bound. According to the World Tariff Profiles 2017, the simple average bound rate is 5.8 percent (11.0 percent for agricultural products and 5.0 percent for industrial products). The simple average MFN import duty in Ukraine is 4.9 percent (8.6 percent for agricultural products and 3.7 percent for industrial goods using WTO definitions).

Sampling and Testing Practices

Importers of U.S. products have complained that inspection officials at ports of entry take larger numbers of samples than needed for laboratory testing. Testing frequency is also believed to be excessive. Cabinet of Ministers Decree No. 833 (June 14, 2002) defines “uniform allotment” (*i.e.*, batches identified for sampling) and establishes sample sizes and sampling time. However, the definition of “allotment” appears arbitrary and not risk-based and results in an artificially large number of allotments sampled and tested. Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees can pose a significant burden on the importer. In 2017 Ukraine announced a major review of the testing practices, but importers report that nothing has yet changed at the border.

Customs Valuation

While Ukraine’s MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that the State Fiscal Service (SFS) assigns higher and seemingly inconsistent customs values to imports, including

¹⁸ See the EU Sanitary and Phytosanitary Barriers entry regarding Agricultural Biotechnology.

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, governed by the Cabinet of Ministers Resolution No. 446, are burdensome and costly. Moreover, U.S. stakeholders claim 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.

GOVERNMENT PROCUREMENT

On May 5, 2016, Ukraine finished its internal procedures to bring the WTO Government Procurement Agreement (GPA) into force in Ukraine, opening market opportunities for U.S. exporters. 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. With the total value of public procurements estimated at 600 billion UAH (\$21.4 billion) per year, or more than 20 percent of GDP, the scale of potential corruption is significant.

EXPORT BARRIERS

A variety of products remain subject to licensing by the Ministry of Economic Development and Trade. Products that require a license prior to export from Ukraine 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 government of Ukraine has required an export license for anthracite coal exports, because Ukrainian thermal power plants consumed primarily this coal grade and the majority of domestic coal production remained in occupied 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 oil seeds (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.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2017, Ukraine was listed as a Priority Watch List country in the annual Special 301 Report. The need for Ukraine to improve its protection and enforcement of IPR was one of the major themes of the TIC meeting chaired by USTR and Ukraine's Ministry of Economic Development and Trade in October 2017. Ukraine continues to lack an effective and transparent system to combat online piracy, and some of the largest online piracy sites in the world are hosted in or operated from Ukraine. Although the adoption of the Law on Cinematography in March 2017 was a sign of progress in the fight against rampant online piracy in Ukraine, the legislation has some shortcomings — for example, some stakeholders report that obligations and responsibilities are too ambiguous or too onerous to facilitate an efficient and effective response to online piracy and the law does not apply to literary or photographic works — and it has not yet demonstrated effectiveness. Legislation to create a specialized IP High Court has passed, but the court has not yet been established.

The United States remains concerned about the unfair, nontransparent administration of the system governing royalty collecting bodies. Ukraine appears to be making progress on finalizing legislation on its collective management regime. It will be important to ensure that the final bill will be effective, both in law and in practice. Widespread and admitted use of infringing software by the Ukrainian government also remains an issue. The Ukrainian government has allocated funds to purchase legal software, but a sustainable mechanism to ensure uniform and permanent transition to the use of authorized software is still needed.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine. This requirement is a significant impediment for distributors of foreign films.

INVESTMENT BARRIERS

Value Added Tax

Although Ukraine has significantly improved its VAT refund system, U.S. companies exporting from Ukraine continue to complain that the government still owes refund arrears from previous years. Although the government had disbursed nearly \$3 billion in 2017 VAT refunds, \$45 million in outstanding refunds remain from previous years. Of additional concern, Ukraine's parliament passed a budget amendment, effective January 1, 2018, pausing a key element in VAT administration reform. The legal suspension gives the Cabinet of Ministers two months to implement a new procedure for tax invoice registration and risk assessment. U.S. exporters 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 most heavily on U.S.-owned companies, which tend to invest in further processed goods.

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. Privatization rules theoretically apply equally to both foreign and domestic investors, but in practice a level playing field for foreign and domestic investors does not always exist. Despite ambitious annual plans, the recent cancellation of two high-profile tenders under questionable circumstances and a long list of stalled privatizations all raise concerns about the Ukrainian government's commitment to privatization. Moreover, Ukraine's failure to implement fair and transparent tenders that protect the rights of investors, as well as its resistance to establishing a specialized Anti-Corruption Court system and ensuring the authority and independence of the National Anti-Corruption Bureau of Ukraine, further limit Ukraine's privatization efforts. Although Ukraine passed a new privatization law in March 2018, the implementation of the law remains to be seen.

Abusive Investigative Raids of Businesses

Businesses in Ukraine have long suffered from abusive investigative activities by state law enforcement personnel and have been unable to turn to Ukraine's court system for protection from corruption and abuse. In November 2017, Ukraine's Parliament adopted the "Business Pressure Relief Law," which, if properly implemented, should help improve the protection of the rights of businesses, prevent abusive practices by law enforcement bodies, and introduce liability for the unlawful behavior of investigating officers. Notwithstanding this development, Ukraine's past practices in this area have created an enduring reputation

that is likely to continue to negatively impact its investment climate and pose a barrier to doing business in the country.

Local Content

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.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was \$38.3 billion in 2017, a 19.8 percent increase (\$6.3 billion) over 2016. U.S. goods exports to Vietnam were \$8.2 billion, down 19.2 percent (\$1.9 billion) from the previous year. Corresponding U.S. imports from Vietnam were \$46.5 billion, up 10.4 percent. Vietnam was the United States' 32nd largest goods export market in 2017.

U.S. exports of services to Vietnam were an estimated \$2.2 billion in 2016 (latest data available) and U.S. imports were \$1.2 billion. Sales of services in Vietnam by majority U.S.-owned affiliates were \$624 million in 2015 (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 \$1.5 billion in 2016 (latest data available), a 17.7 percent increase from 2015.

Trade Agreements

Vietnam currently is party to five free trade agreements (FTAs) with ASEAN (Association of Southeast Asian Nations), Chile, the Eurasian Customs Union, Japan, , and Korea . As a member of ASEAN, Vietnam also is party to ASEAN FTAs with Australia and New Zealand, China, India, Japan, and Korea, , and. Vietnam has finalized an FTA with the European Union, but the agreement has not yet been signed. In addition, Vietnam is a participant in the Regional Comprehensive Economic Partnership negotiations, which include the ten ASEAN countries, Australia, China, India, Japan, Korea, and New Zealand. Vietnam remains a member of TPP, now known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and is negotiating FTAs with other countries, including Israel.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Cars and Vehicles

In October 2017, Vietnam released Decree 116/2017/ND-CP, which further tightens conditions for automotive manufacture, assembly, importation, and service, and for automobile warranties. The decree took effect on January 1, 2018. Under the decree, importers must have a Vehicle Type Approval (VTA) certificate issued by national authorities for each imported vehicle. Importers also must submit lot-by-lot emission and safety certificates issued by the Vietnam Registrar (VR). Vietnam provided only ten weeks of lead-time between the announcement of the decree and its entry into force, providing little time for importers and manufacturers to adapt to and comply with the new requirements. Because the United States uses self-certification instead of vehicle type approvals, U.S.-based manufacturers may no longer be able to export automobiles to Vietnam. In addition, industry stakeholders indicate that lot-by-lot emission and safety tests will be extremely costly and may not be feasible to implement. 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.

Beginning in 2018, under Decision 04/2017/QĐ-TTg, Vietnam will require all vehicles with fewer than seven seats or more than nine seats to have energy labels and to conform to minimum energy efficiency standards.

Pharmaceuticals

Vietnam's new Pharmaceutical Law came into effect in January 2017. The law updated certain aspects of Vietnam's legal framework so it is closer to international practices. Under the older 2005 Law on Pharmacy, a new drug had to undergo clinical trials in Vietnam before being marketed in Vietnam. Under the 2005 law, a drug could be exempt from this requirement only if it had been legally on the market in its country of origin for at least five years. The 2017 law lifts the requirement for trials in Vietnam (except with respect to vaccines) provided that there is sufficient clinical data on the safety and efficiency of the drug, and that the drug is in circulation in at least one other country.

Sanitary and Phytosanitary Barriers

Food Safety: Decree 15

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, one area of concern is transfer of authority to propose maximum residue limits (MRLs) for food safety from Vietnam's Ministry of Health (MOH) to the Ministry of Agriculture and Rural Development (MARD), although MOH will continue to officially authorize MRLs. In the past, MARD has taken a more restrictive view concerning MRLs and could apply such an approach under the new jurisdiction. Additionally, the United States does not yet know if the new Decree will resolve outstanding U.S. concerns on the original Food Safety Law (uneven enforcement and lack of transparency). The United States will continue to monitor development of these new regulations.

Offal Products

In September 2013, the MARD announced the lifting of Vietnam's ban on the importation of so-called "white offal," such as stomach and intestines. 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 the 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 also has raised white offal with Vietnam at the technical and political levels on several occasions, including during Trade and Investment Framework Agreement (TIFA) meetings in 2017. 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 pending or new 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 has proposed a follow-up site visit to the United States to review establishments that have registered to sell white offal in Vietnam. USTR and USDA are working with industry to respond to Vietnam and find a way to resolve this issue.

Animal Health: Proposed Livestock Development Law

At the end of 2017, MARD began drafting a Livestock Development Law. The proposed law would regulate livestock breeding and production. The current draft would impose a ban on the import of all offal products, further complicating resolution of the white offal issue. The draft also would reintroduce a previously rescinded ban on U.S. red offal. MARD has informed the United States that it will notify the WTO Committee on Sanitary and Phytosanitary Measures (SPS) when a draft is finalized. The United States continues to monitor the situation closely and to urge Vietnam to refrain from trade-restrictive actions.

MOH Circular 24/Veterinary Drugs

In September 2016, Vietnam notified to the WTO the Ministry of Health's draft amendment to Circular 24 on MRLs for Veterinary Drugs in Foods. The measure would ban certain drugs that previously were permitted in accordance with Codex MRLs. 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. In discussions, 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 United States is waiting for confirmation that Vietnam has taken steps to implement the understanding, and, along with other affected trading partners, continues to press the issue of veterinary drugs.

MARD Circular 25

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). Although MARD claims this transfer will streamline the Circular 25 review process, the United States is concerned that DAH review procedures complicate the registration of new facilities and, in turn, hamper trade. The United States will continue to seek improvements to the system for reviewing and approving new facilities.

Products of Plant Origin

On January 1, 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.

IMPORT POLICIES

Tariffs

Vietnam has bound all of its tariff lines at the WTO, and in 2016 Vietnam's average MFN applied tariff rate was 9.6 percent. In April 2016, Vietnam issued a new Law on Tariffs (No. 107) with a new applied tariff schedule, which took effect on 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. Tariffs are applied on goods imported into Vietnam's customs territory from its export processing and free trade zones, as well as on goods imported from Vietnam into those zones.

Aside from import tariffs, Vietnam applies export taxes ranging 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). Vietnam also maintains tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

In August 2016, the Ministry of Finance (MOF) issued Decree 128. This decree provides an export tax exemption to environment-friendly goods labeled "Green Vietnam."

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 generally higher rates. In addition, in recent years, Vietnam has increased 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.

On July 1, 2016, Vietnam implemented Law 106, which 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.

In November 2017, Vietnam issued Decree 125. This decree increased the number of MFN duty-free tariff lines from 3,133 to 3,282. The decree also doubled tariff rates for used passenger vehicles. In addition,

Decree 125 reduced tariff rates to zero for spare automotive parts that cannot be produced domestically (Harmonized System code 98.49). The reduction applies from 2018 to 2022. This preferential import tariff program is available only to companies that meet certain conditions set out in Decree 116 regarding car production and importation. Decree 125 went into effect on January 1, 2018.

Nontariff Barriers

Import Prohibitions

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used spare parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, and certain cultural products. In November 2015, the Ministry of Science and Technology issued Circular 23/2015/TT-BKHCHN, on the importation of used machinery, equipment, and technology. The decree rolled back some restrictions on the importation of remanufactured equipment and simplifies the documentation needed to establish the year of manufacture of used equipment.

In 2012, Vietnam's Prime Minister issued Directive 23, which banned the importation of a list of products, including some that are potentially harmful to the environment. In 2014, the Ministry of Industry and Trade (MOIT) issued Circular 05/2014, which set out a list of items subject to permanent and temporary bans on importation for re-export under Directive 23, including chemicals, plastics and plastic waste, and certain types of machinery and equipment. In addition, Circular 25, issued by the Ministry of Construction (MOC) on September 2016, prohibits the importation of asbestos of the amphibole group.

Vietnam maintains import prohibitions on certain used information technology (IT) products. In July 2016, Vietnam enacted Decision 18, which 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: imported in conjunction with the relocation of means of production of a single organization; imported for the control, operation and inspection of activities in one or all parts of a system or production line; imported for software production, business outsourcing or data processing for foreign partners; or 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 Licenses

In June 2015, MOIT issued Circular 12/2015/TT-BCT, which subjected some steel products to import licensing. In 2014, MOIT issued Circular 35, which subjects urea, mineral, and chemical fertilizer products to import licensing. In July 2017, MOIT issued Circular 07/2017/TT-BCT to abolish import licensing for some kinds of fertilizers, including urea fertilizer, mineral fertilizer and chemical fertilizer containing nitrogen, phosphorus and potassium. In 2015, the Ministry of Health issued Circular 30, which provides that an import license is required for 25 diagnostic devices and 24 treatment devices.

In 2014, the Ministry of Information and Communications (MIC) issued Circular 18/2014/TT-BTTTT, which 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.

Vietnam enacted Decree 94 on "Wine Production and Wine Trading" in January 2013. The decree established three types of licenses (liquor distribution licenses, liquor wholesale licenses, and liquor retail licenses). The decree also provided that only enterprises with liquor distribution licenses are permitted to directly import liquor. In September 2017, Decree 94 was replaced with Decree 105/2017/ND-CP, which

ends the three-tiered licensing system and stipulates a simpler and less restrictive set of conditions for alcohol importation and trading.

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.

In May 2014, MOF published Decision 1079 regarding the implementation of price stabilization measures for dairy products for children under six years old. The decision set maximum prices and required price reductions on a number of branded infant and children's formula products. The decision also set the maximum wholesale-to-retail markup for these goods at 15 percent. In April 2015, MOF extended the milk price ceiling through the end of 2016. In November 2016, the Vietnamese government moved responsibility for milk price controls from the MOF to MOIT, effective January 1, 2017, and in December 2016, the Vietnamese government further extended the milk price controls until March 2017. In August 2017, MOIT issued Circular 08, giving milk processors, traders, and importers 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. 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.

Customs 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 Vietnam on implementation of the Customs Valuation Agreement.

Vietnam's Law on Customs came into effect on January 1, 2015. The law 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.

In November 2015, Vietnam ratified the WTO Trade Facilitation Agreement (TFA). Vietnam subsequently notified its Category A commitments to the WTO. To support these and related efforts, in October 2016 the government established the "National Steering Committee for the ASEAN Single Window, the National Single Window and Trade Facilitation" led by the Deputy Prime Minister. Pursuant to a memorandum of understanding, USAID is to support the Vietnam Trade Facilitation Alliance, which the American Chamber of Commerce in Ho Chi Minh City and the Vietnam Chamber of Commerce and Industry lead, to help Vietnam implement its WTO Trade Facilitation Agreement commitments. Vietnam also has agreed to develop a pilot customs bond program, supported by the Global Alliance for Trade Facilitation and funded by multiple donors.

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.

Prior to 2017, Decision 6139/QD-BCT gave the right to export rice to only 150 companies. However, this decision was abolished by MOIT in January 2017. Now, all companies can participate in rice exportation.

Other Nontariff Barriers

U.S. stakeholders continue to express concern about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Effective July 2017, Decree 54 permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical community welcomed this step, but takes issue with warehousing, distribution, and licensing requirements that Vietnam imposed.

EXPORT POLICIES

Export Prohibitions

MARD Circular 24, issued in June 2016, included a list of certain wood products banned from exportation. These products include round timber and sawn timber made from natural wood, firewood and charcoal made from timber, and firewood made from natural wood.

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 of the GPA since 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Vietnam remained on the Special 301 Watch List in 2017. Online piracy and sales of counterfeit goods over the Internet and in physical markets continue to be a concern, as noted in the 2017 Out-of-Cycle Review of Notorious Markets. Also, enforcement of 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-TV industry enacted in March 2016 require that foreign channels on pay-TV services account for no more than 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-TV 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, issued in 2013, 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. The United States will continue to monitor the implementation of pay-TV measures and raise concerns with Vietnam as appropriate.

Telecommunications

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 a regulation (Circular 1469/CVT-GCKM) 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. MOIT issued Circular 8 in April 2013, which provides additional details on the application of the economic needs test, which was first introduced in 2007. The only companies exempt from the economic needs test requirement are small- and medium-sized retail outlets (less than 500 square meters) located in commercial zones.

Tax Withholding by Local Service Providers

MOF Circular 103, which went into effect in October 2014, requires local entities to withhold taxes of up to 2 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.

Banking and Security 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 permitted up to 49 percent. Foreign bank branches and representative offices of all foreign bank and credit institutions continue to face geographic network restrictions that are not imposed on joint stock banks or joint venture banks, such as being limited to one office per province.

Electronic Payment Services

Vietnam has sought to promote the development of a local electronic payments industry. In April 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. Additionally, in June 2016, the Vietnamese government 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 cross-border. Coinciding with President Trump's visit to Vietnam in November 2017, the State Bank of Vietnam agreed to postpone the implementation of Circular 19 for international credit and debit electronic service suppliers for one year, and published for public comment draft amendments to replace sections of Circular 19. The amended circular, Circular 26/2017/TT-NHNN, was issued in December 2017, extending the deadline for the above requirements to January 2019. The United States will continue to urge Vietnam to consider alternative, less trade-restrictive approaches.

BARRIERS TO DIGITAL TRADE

Advertising Services

Decree No. 181/2013/ND-CP, issued in 2013, and for which specific enforcement measures were introduced in 2017, significantly restricts the supply of online advertising. The decree requires that Vietnamese advertisers to contract with a Vietnam-based advertising-services provider in order to place advertisements on foreign websites, and it 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. The United States will continue to press Vietnam to eliminate these restrictions.

Over-The-Top 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 and will continue to urge Vietnam not to go forward with this proposed requirement.

Internet-based Content Services

The Vietnamese government 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. The Vietnamese government restricts or blocks access to certain websites that it deems politically or culturally inappropriate. In July 2013, Vietnam promulgated Decree 72/2013/ND-CP, which 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 the Vietnamese government and will continue to monitor this issue closely.

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.

In 2016, MIC issued Circular 38/2016/TT-BTTTT on Cross-border provision of General Information. While the circular does not require localization of servers, it requires offshore service providers with a large number of users in Vietnam to comply with local content restrictions. Circular No. 38 is one of the implementing circulars of Decree No. 72/2013/ND-CP on the management, provision, and use of Internet services and online information. Specific requirements under Circular No. 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 cooperate with the authority on taking down information that is illegal according to Decree 72.

Cybersecurity and Data Localization

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 ICT products have expressed concerns about this law and its implementing decrees – Decree 108/2016/ND-CP on conditions for granting business licenses for provision of online information security services and Decree 58/2016/ND-CP on trading and import-export of civil cryptographic products and services – due to their ambiguous language.

The National Assembly is currently debating the Ministry of Public Security’s draft law on cybersecurity. The draft law contains many provisions that could serve as barriers to trade and restrict Vietnam’s digital economy, including Article 34’s requirement that online firms locate data and servers in-country. In addition, Vietnam’s draft law on cybersecurity contains elements of personal information protection generally found in privacy laws, including consent to transfer requirements, placing extra burdens on foreign firms operating in Vietnam. The United States has made several recommendations and continues to engage the government of Vietnam to ensure cybersecurity legislation is in line with international standards.

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.

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.²⁰ 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, 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 is also 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 2018 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 has 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 \$232 billion of environmental goods in 2016. China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

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. The Secretary of State has submitted its report to Congress identifying these 25 countries. 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 These 25 countries were identified in the Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: 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
US Goods Trade for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Goods Balance		Change 2016-17	Exports* 2016	Exports* 2017	Change 2016-17		Imports** 2016	Imports** 2017	Change 2016-17	
	2016	2017				Value	Percent			Value	Percent
World	-736,794	-796,194	-59,400	1,451,011	1,546,725	95,714	6.6	2,187,805	2,342,919	155,114	7.1
Canada	-10,958	-17,504	-6,545	266,797	282,472	15,674	5.9	277,756	299,975	22,220	8.0
Mexico	-64,354	-71,057	-6,702	229,702	242,989	13,287	5.8	294,056	314,045	19,989	6.8
China	-347,016	-375,228	-28,212	115,602	130,370	14,767	12.8	462,618	505,597	42,979	9.3
Japan	-68,810	-68,848	-38	63,236	67,696	4,460	7.1	132,046	136,544	4,497	3.4
United Kingdom	1,017	3,254	2,237	55,289	56,329	1,040	1.9	54,272	53,075	-1,197	-2.2
Germany	-64,736	-64,252	484	49,363	53,493	4,129	8.4	114,099	117,745	3,645	3.2
Korea	-27,572	-22,887	4,684	42,309	48,277	5,967	14.1	69,881	71,164	1,283	1.8
Netherlands	23,576	24,487	911	39,690	42,230	2,540	6.4	16,114	17,743	1,629	10.1
Hong Kong	27,487	32,470	4,983	34,895	40,024	5,130	14.7	7,407	7,554	147	2.0
Brazil	4,053	7,650	3,597	30,107	37,077	6,970	23.2	26,054	29,427	3,373	12.9
France	-15,578	-15,306	272	31,132	33,582	2,450	7.9	46,710	48,888	2,178	4.7
Belgium	15,084	14,816	-267	32,097	29,911	-2,187	-6.8	17,014	15,095	-1,919	-11.3
Singapore	8,891	10,356	1,465	26,725	29,753	3,028	11.3	17,833	19,397	1,563	8.8
Taiwan	-13,211	-16,737	-3,527	26,037	25,754	-283	-1.1	39,248	42,492	3,244	8.3
India	-24,380	-22,931	1,449	21,652	25,700	4,048	18.7	46,032	48,631	2,599	5.6
Australia	12,650	14,550	1,900	22,160	24,601	2,442	11.0	9,510	10,051	541	5.7
Switzerland	-13,572	-14,308	-736	22,777	21,694	-1,082	-4.8	36,349	36,002	-347	-1.0
UAE	19,031	15,682	-3,349	22,401	20,005	-2,396	-10.7	3,371	4,323	953	28.3
Italy	-28,565	-31,640	-3,075	16,707	18,323	1,616	9.7	45,273	49,963	4,690	10.4
Saudi Arabia	1,055	-2,606	-3,661	17,972	16,261	-1,712	-9.5	16,918	18,866	1,949	11.5
Chile	4,125	3,057	-1,068	12,922	13,608	687	5.3	8,797	10,552	1,755	19.9
Colombia	-726	-284	443	13,067	13,272	205	1.6	13,794	13,556	-238	-1.7
Malaysia	-24,798	-24,583	215	11,832	12,826	994	8.4	36,630	37,409	779	2.1
Israel	-9,007	-9,403	-396	13,197	12,544	-653	-4.9	22,203	21,947	-257	-1.2
Spain	-3,027	-4,646	-1,619	10,398	11,015	617	5.9	13,424	15,661	2,236	16.7
Thailand	-19,032	-20,353	-1,321	10,445	10,837	392	3.8	29,477	31,190	1,713	5.8
Ireland	-35,962	-38,107	-2,145	9,565	10,737	1,171	12.2	45,528	48,844	3,316	7.3
Turkey	1,342	330	-1,012	9,388	9,751	363	3.9	8,046	9,421	1,375	17.1
Argentina	3,865	4,748	883	8,513	9,513	1,000	11.8	4,648	4,765	118	2.5
Peru	1,703	1,403	-300	7,955	8,686	731	9.2	6,252	7,283	1,031	16.5
Philippines	-1,844	-3,160	-1,315	8,200	8,467	267	3.3	10,044	11,627	1,583	15.8
Vietnam	-31,998	-38,320	-6,322	10,100	8,164	-1,937	-19.2	42,099	46,483	4,385	10.4
Dominican Republic	3,076	3,046	-30	7,756	7,793	37	0.5	4,680	4,747	68	1.4
Russia	-8,744	-10,016	-1,272	5,792	6,987	1,195	20.6	14,536	17,003	2,467	17.0
Guatemala	1,903	2,960	1,057	5,841	6,976	1,136	19.4	3,938	4,016	79	2.0
Indonesia	-13,171	-13,341	-170	6,024	6,868	844	14.0	19,194	20,209	1,014	5.3
Panama	5,718	6,005	287	6,128	6,447	319	5.2	410	442	32	7.8
Costa Rica	1,538	1,670	132	5,870	6,233	363	6.2	4,331	4,562	231	5.3
Norway	-484	269	753	3,924	5,299	1,374	35.0	4,408	5,030	621	14.1
Kuwait	-6	2,250	2,256	3,295	5,167	1,871	56.8	3,301	2,916	-385	-11.7
Honduras	212	501	289	4,830	5,083	253	5.2	4,618	4,581	-36	-0.8
South Africa	-2,160	-2,717	-557	4,605	5,043	438	9.5	6,765	7,759	994	14.7
Ecuador	-1,906	-1,600	305	4,153	4,778	625	15.0	6,059	6,378	319	5.3
Poland	-2,303	-2,583	-280	3,658	4,527	870	23.8	5,961	7,110	1,150	19.3
Austria	-7,075	-7,457	-383	3,796	4,264	469	12.3	10,870	11,722	851	7.8
Egypt	1,990	2,349	359	3,483	3,984	501	14.4	1,493	1,635	142	9.5
New Zealand	-473	-231	242	3,574	3,925	350	9.8	4,047	4,156	108	2.7
Sweden	-5,887	-7,010	-1,123	3,814	3,730	-84	-2.2	9,701	10,740	1,040	10.7
Qatar	3,765	1,917	-1,848	4,926	3,119	-1,807	-36.7	1,160	1,201	41	3.5
El Salvador	437	580	143	2,933	3,051	118	4.0	2,496	2,471	-25	-1.0
Pakistan	-1,336	-765	571	2,108	2,809	702	33.3	3,444	3,574	130	3.8
Paraguay	1,821	2,635	813	1,970	2,760	790	40.1	149	125	-24	-16.1
Czech Republic	-2,440	-2,320	120	1,963	2,275	312	15.9	4,403	4,595	192	4.4
Denmark	-5,703	-5,476	227	2,238	2,216	-22	-1.0	7,941	7,692	-249	-3.1
Nigeria	-2,281	-4,896	-2,615	1,895	2,155	260	13.7	4,176	7,051	2,875	68.8
Morocco	911	887	-25	1,933	2,116	184	9.5	1,021	1,230	208	20.4
Oman	679	1,027	348	1,804	2,096	292	16.2	1,125	1,069	-57	-5.0
Jordan	-96	275	371	1,459	1,963	504	34.5	1,555	1,688	133	8.5
Hungary	-3,495	-3,199	296	1,844	1,890	45	2.4	5,340	5,089	-251	-4.7
Ukraine	499	809	310	1,077	1,826	749	69.5	578	1,017	439	75.9
Nicaragua	-1,814	-1,680	134	1,479	1,583	104	7.0	3,293	3,263	-30	-0.9
Finland	-2,998	-4,365	-1,367	1,573	1,528	-44	-2.8	4,571	5,893	1,323	28.9

Bangladesh	-5,005	-4,224	782	906	1,465	559	61.7	5,911	5,688	-223	-3.8
Portugal	-2,258	-2,310	-52	948	1,193	245	25.9	3,206	3,503	298	9.3
Luxembourg	954	585	-369	1,453	1,079	-374	-25.8	499	494	-5	-1.1
Algeria	-1,037	-2,747	-1,710	2,191	1,061	-1,130	-51.6	3,228	3,808	580	18.0
Greece	-481	-296	185	747	962	215	28.8	1,228	1,258	30	2.4
Romania	-1,269	-1,253	15	695	948	254	36.5	1,963	2,201	238	12.1
Bahrain	131	-89	-220	899	907	8	0.9	768	996	228	29.7
Ghana	511	136	-375	832	886	54	6.5	321	750	429	133.5
Ethiopia	590	582	-8	826	873	47	5.7	236	291	55	23.3
Angola	-1,604	-1,793	-189	1,251	810	-441	-35.2	2,856	2,604	-252	-8.8
Lithuania	-718	-836	-118	464	609	146	31.4	1,182	1,445	263	22.3
Bolivia	-318	29	347	657	595	-63	-9.5	975	566	-410	-42.0
Kazakhstan	361	-234	-595	1,111	551	-560	-50.4	750	785	35	4.7
Tunisia	135	89	-46	527	551	24	4.5	392	462	70	17.9
Kenya	-156	-119	37	397	455	59	14.8	552	574	22	3.9
Croatia	-224	8	232	286	444	158	55.4	510	437	-74	-14.4
Slovakia	-2,233	-2,607	-374	293	443	150	51.0	2,526	3,050	524	20.7
Cambodia	-2,454	-2,664	-211	361	400	39	10.9	2,814	3,064	250	8.9
Bulgaria	-335	-277	58	269	382	113	42.2	604	659	55	9.2
Latvia	-65	-75	-10	273	382	109	39.9	338	457	119	35.2
Slovenia	-421	-389	32	331	372	41	12.4	752	761	9	1.2
Sri Lanka	-2,416	-2,523	-107	368	336	-32	-8.8	2,784	2,858	75	2.7
Malta	-1,001	137	1,138	292	299	7	2.3	1,294	163	-1,131	-87.4
Estonia	-745	-329	416	257	274	18	6.8	1,001	603	-398	-39.8
Burma	-52	-155	-103	193	211	18	9.4	245	366	121	49.6
Brunei	601	98	-503	615	121	-494	-80.3	14	23	9	65.6
Cyprus	129	32	-97	182	80	-103	-56.3	53	47	-6	-11.0
Laos	-24	-71	-46	31	26	-5	-16.9	55	96	41	74.8
European Union - 28	-146,760	-151,416	-4,655	269,617	283,517	13,901	5.2	416,377	434,933	18,556	4.5

Note: The shipment of goods through multiple countries can make standard measures of bilateral trade potentially misleading.

US Services Trade for Given Trade Partners in Rank Order of US Services Exports
(Values in Millions of Dollars)

Country	Services		Change 2015-16	Exports* 2015	Exports* 2016	Change 2015-16		Imports** 2015	Imports** 2016	Change 2015-16	
	2015	2016				Value	Percent			Value	Percent
World	261,410	247,714	-13,696	753,150	752,368	-782	-0.1	491,740	504,654	12,914	2.6
United Kingdom	13,971	14,031	60	67,560	65,729	-1,831	-2.7	53,589	51,698	-1,891	-3.5
China	33,473	38,018	4,545	48,537	54,157	5,620	11.6	15,064	16,139	1,075	7.1
Canada	25,339	24,007	-1,332	54,510	53,957	-553	-1.0	29,171	29,950	779	2.7
Ireland	26,332	29,712	3,380	42,375	46,629	4,254	10.0	16,043	16,917	874	5.4
Japan	15,227	13,150	-2,077	44,746	44,154	-592	-1.3	29,519	31,004	1,485	5.0
Switzerland	9,689	8,821	-868	31,216	32,584	1,368	4.4	21,527	23,763	2,236	10.4
Mexico	8,726	7,476	-1,250	31,604	32,045	441	1.4	22,878	24,569	1,691	7.4
Germany	-1,794	-1,757	37	29,983	31,638	1,655	5.5	31,777	33,395	1,618	5.1
Brazil	19,812	17,541	-2,271	27,646	24,338	-3,308	-12.0	7,834	6,797	-1,037	-13.2
Australia	15,141	14,703	-438	22,344	21,977	-367	-1.6	7,203	7,274	71	1.0
Korea	9,408	10,081	673	20,645	21,055	410	2.0	11,237	10,974	-263	-2.3
India	-6,236	-5,176	1,060	18,374	20,632	2,258	12.3	24,610	25,808	1,198	4.9
France	3,444	3,223	-221	19,755	19,674	-81	-0.4	16,311	16,451	140	0.9
Singapore	7,610	9,682	2,072	14,323	16,940	2,617	18.3	6,713	7,258	545	8.1
Netherlands	6,008	5,775	-233	16,245	15,569	-676	-4.2	10,237	9,794	-443	-4.3
Taiwan	4,624	3,965	-659	12,269	11,697	-572	-4.7	7,645	7,732	87	1.1
Hong Kong	1,004	1,305	301	9,842	10,053	211	2.1	8,838	8,748	-90	-1.0
Saudi Arabia	8,689	8,515	-174	9,806	9,678	-128	-1.3	1,117	1,163	46	4.1
Italy	-1,629	-2,479	-850	9,157	8,860	-297	-3.2	10,786	11,339	553	5.1
Argentina	6,321	6,434	113	8,373	8,598	225	2.7	2,052	2,164	112	5.5
Spain	956	507	-449	6,793	6,803	10	0.1	5,837	6,296	459	7.9
Colombia	3,258	3,202	-56	6,389	6,211	-178	-2.8	3,131	3,009	-122	-3.9
Luxembourg	4,785	3,973	-812	6,569	6,003	-566	-8.6	1,784	2,030	246	13.8
Sweden	2,786	2,820	34	6,065	5,879	-186	-3.1	3,279	3,059	-220	-6.7
Belgium	336	110	-226	6,217	5,876	-341	-5.5	5,881	5,766	-115	-2.0
Israel	-1,331	-1,441	-110	4,837	5,135	298	6.2	6,168	6,576	408	6.6
Denmark	1,595	2,279	684	4,255	4,950	695	16.3	2,660	2,671	11	0.4
Russia	2,373	2,171	-202	4,731	4,505	-226	-4.8	2,358	2,334	-24	-1.0
Chile	2,511	2,572	61	4,045	4,309	264	6.5	1,534	1,737	203	13.2
Turkey	1,076	1,204	128	3,111	3,093	-18	-0.6	2,035	1,889	-146	-7.2
Norway	953	321	-632	3,542	3,059	-483	-13.6	2,589	2,738	149	5.8
Malaysia	1,028	1,133	105	2,844	3,053	209	7.3	1,816	1,920	104	5.7
South Africa	1,457	1,070	-387	3,068	2,889	-179	-5.8	1,611	1,819	208	12.9
Peru	1,022	1,070	48	3,937	2,702	-1,235	-31.4	2,915	1,632	-1,283	-44.0
Thailand	-359	-625	-266	2,692	2,701	9	0.3	3,051	3,326	275	9.0
Philippines	-3,015	-3,507	-492	2,487	2,641	154	6.2	5,502	6,148	646	11.7
New Zealand	446	315	-131	2,422	2,545	123	5.1	1,976	2,230	254	12.9
Nigeria	2,197	2,065	-132	2,661	2,476	-185	-7.0	464	411	-53	-11.4
Poland	646	547	-99	2,449	2,438	-11	-0.4	1,803	1,891	88	4.9
Indonesia	1,736	1,453	-283	2,527	2,361	-166	-6.6	791	908	117	14.8
Vietnam	966	1,016	50	2,036	2,224	188	9.2	1,070	1,208	138	12.9
Finland	-218	-342	-124	1,866	2,126	260	13.9	2,084	2,468	384	18.4
Costa Rica	-713	-769	-56	1,872	2,115	243	13.0	2,585	2,884	299	11.6
Dominican Republic	-2,720	-2,778	-58	1,607	1,773	166	10.3	4,327	4,551	224	5.2
Guatemala	514	600	86	1,523	1,597	74	4.9	1,009	997	-12	-1.2
Panama	451	266	-185	1,703	1,521	-182	-10.7	1,252	1,255	3	0.2
Austria	1	-69	-70	1,602	1,515	-87	-5.4	1,601	1,584	-17	-1.1
Czech Republic	56	-19	-75	1,204	1,244	40	3.3	1,148	1,263	115	10.0
Honduras	394	518	124	1,053	1,152	99	9.4	659	634	-25	-3.8
El Salvador	294	408	114	1,072	1,134	62	5.8	778	726	-52	-6.7
Portugal	-394	-621	-227	1,151	1,119	-32	-2.8	1,545	1,740	195	12.6
Hungary	161	152	-9	987	1,091	104	10.5	826	939	113	13.7
Greece	-1,821	-2,032	-211	940	901	-39	-4.1	2,761	2,933	172	6.2
Romania	-414	-197	217	950	863	-87	-9.2	1,364	1,060	-304	-22.3
Jordan	84	104	20	679	698	19	2.8	595	594	-1	-0.2
Morocco	16	-56	-72	630	569	-61	-9.7	614	625	11	1.8
Oman	111	154	43	435	469	34	7.8	324	315	-9	-2.8
Nicaragua	-165	-188	-23	450	443	-7	-1.6	615	631	16	2.6
Bulgaria	-4	-114	-110	454	442	-12	-2.6	458	556	98	21.4
Slovakia	211	NA	NA	360	376	16	4.4	149	NA	NA	NA
Croatia	118	108	-10	363	364	1	0.3	245	256	11	4.5
Bahrain	-807	-753	54	297	271	-26	-8.8	1,104	1,024	-80	-7.2

Lithuania	-269	-270	-1	217	224	7	3.2	486	494	8	1.6
Slovenia	121	99	-22	201	187	-14	-7.0	80	88	8	10.0
Malta	-512	-467	45	168	180	12	7.1	680	647	-33	-4.9
Cyprus	14	NA	NA	174	177	3	1.7	160	NA	NA	NA
Latvia	66	65	-1	151	160	9	6.0	85	95	10	11.8
Estonia	29	25	-4	135	136	1	0.7	106	111	5	4.7
Brunei	67	60	-7	77	69	-8	-10.4	10	9	-1	-10.0
European Union - 28	54,374	54,795	421	228,433	231,249	2,816	1.2	174,059	176,454	2,395	1.4

US FDI Abroad for Given Trade Partners in Rank Order of FDI
(Values in Millions of Dollars)

Country	FDI***	FDI***	% Change 2015-16	FDI Area
	2015	2016		
World	5,048,773	5,332,225	5.6	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Netherlands	783,309	847,391	8.2	Nonbank Holding Companies, Finance/Insurance, Manufacturing
United Kingdom	625,124	682,361	9.2	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Luxembourg	553,066	607,849	9.9	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Ireland	334,325	387,092	15.8	Nonbank Holding Companies, Information, Manufacturing
Canada	346,746	363,914	5.0	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Singapore	250,748	258,864	3.2	Nonbank Holding Companies, Manufacturing, Wholesale Trade
Switzerland	155,710	172,608	10.9	Nonbank Holding Companies, Manufacturing, Finance/Insurance
Australia	158,726	165,347	4.2	Nonbank Holding Companies, Mining, Manufacturing
Japan	104,128	114,637	10.1	Finance/Insurance, Manufacturing, Information
Germany	102,068	107,711	5.5	Nonbank Holding Companies, Manufacturing, Wholesale Trade
China	84,525	92,481	9.4	Manufacturing, Wholesale Trade, Nonbank Holding Companies
Mexico	86,795	87,635	1.0	Manufacturing, Nonbank Holding Companies, Mining
France	77,860	78,062	0.3	Manufacturing, Nonbank Holding Companies, Finance/Insurance
Hong Kong	64,105	65,625	2.4	Wholesale Trade, Nonbank Holding Companies, Information
Brazil	57,579	64,438	11.9	Manufacturing, Finance/Insurance, Nonbank Holding Companies
Belgium	46,120	55,822	21.0	Manufacturing, Wholesale Trade, Finance/Insurance
Korea	36,931	39,068	5.8	Manufacturing, Finance/Insurance, Wholesale Trade
Spain	36,280	37,388	3.1	Manufacturing, Nonbank Holding Companies, Finance/Insurance
India	29,939	32,939	10.0	Prof., Scientific, And Tech. Services, Manufacturing, Wholesale Trade
Norway	34,736	32,318	-7.0	Mining, Manufacturing, Information
Chile	28,543	29,428	3.1	Mining, Finance/Insurance, Manufacturing
Sweden	30,497	27,145	-11.0	Nonbank Holding Companies, Finance/Insurance, Manufacturing
Italy	26,300	24,686	-6.1	Manufacturing, Wholesale Trade, Depository Institutions
Egypt	23,236	22,202	-4.4	
Taiwan	15,307	16,187	5.7	Manufacturing, Depository Institutions, Wholesale Trade
Austria	11,814	15,891	34.5	Manufacturing, Finance/Insurance, Wholesale Trade
Indonesia	13,352	14,563	9.1	Mining, Nonbank Holding Companies, Manufacturing
Malaysia	14,968	13,897	-7.2	Manufacturing, Finance/Insurance, Mining
Argentina	13,600	13,721	0.9	Manufacturing, Information, Mining
Denmark	12,969	13,643	5.2	Nonbank Holding Companies, Manufacturing, Wholesale Trade
UAE	15,625	13,355	-14.5	
Thailand	10,594	11,774	11.1	Manufacturing, Mining, Wholesale Trade
Poland	11,239	11,621	3.4	Manufacturing, Wholesale Trade, Finance/Insurance
Russia	8,543	10,574	23.8	Manufacturing, Information, Wholesale Trade
Saudi Arabia	9,669	9,825	1.6	Nonbank Holding Companies, Mining, Manufacturing
Israel	9,119	9,669	6.0	Manufacturing, Prof., Scientific, And Tech. Services, Information
Qatar	8,005	8,737	9.1	
New Zealand	7,929	8,430	6.3	Finance/Insurance, Manufacturing, Nonbank Holding Companies
Hungary	6,302	6,552	4.0	Finance/Insurance, Manufacturing, Wholesale Trade
Colombia	6,522	6,217	-4.7	Mining, Manufacturing, Finance/Insurance
Peru	5,743	6,187	7.7	Mining, Manufacturing, Wholesale Trade
Philippines	5,390	5,896	9.4	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Czech Republic	5,847	5,524	-5.5	Manufacturing, Information, Prof., Scientific, And Tech. Services
South Africa	5,336	5,061	-5.2	Manufacturing, Prof., Scientific, And Tech. Services, Wholesale Trade
Algeria	4,098	4,451	8.6	
Panama	3,751	4,377	16.7	Nonbank Holding Companies, Finance/Insurance, Wholesale Trade
Nigeria	4,558	3,819	-16.2	Mining, Manufacturing, Prof., Scientific, And Tech. Services
Finland	1,239	3,395	174.0	Manufacturing, Information, Prof., Scientific, And Tech. Services
Turkey	3,058	3,109	1.7	Manufacturing, Wholesale Trade, Prof., Scientific, And Tech. Services
Ghana	NA	2,944	NA	
El Salvador	2,614	2,684	2.7	
Romania	2,557	2,646	3.5	
Portugal	2,240	2,273	1.5	Wholesale Trade, Manufacturing, Finance/Insurance
Cyprus	2,030	1,625	-20.0	
Costa Rica	1,423	1,565	10.0	Manufacturing, Information, Prof., Scientific, And Tech. Services
Vietnam	1,268	1,492	17.7	
Dominican Republic	1,299	1,401	7.9	Wholesale Trade, Information, Nonbank Holding Companies
Honduras	1,147	1,140	-0.6	Manufacturing, Nonbank Holding Companies, Information
Guatemala	1,072	1,005	-6.3	
Angola	239	804	236.4	
Malta	703	751	6.8	
Greece	605	628	3.8	Manufacturing, Wholesale Trade, Information

Ukraine	633	618	-2.4	
Bangladesh	564	616	9.2	
Slovakia	747	568	-24.0	
Bahrain	567	548	-3.4	
Bolivia	455	546	20.0	
Ecuador	491	509	3.7	Mining, Manufacturing, Finance/Insurance
Bulgaria	436	451	3.4	
Pakistan	398	409	2.8	
Slovenia	381	399	4.7	
Kenya	324	369	13.9	
Tunisia	270	294	8.9	
Morocco	356	288	-19.1	
Jordan	228	213	-6.6	
Kuwait	NA	189	NA	
Paraguay	138	159	15.2	
Estonia	133	134	0.8	
Nicaragua	184	117	-36.4	
Sri Lanka	113	117	3.5	
Brunei	22	30	36.4	
Croatia	89	4	-95.5	
Burma	1	1	NA	
Oman	1,248	NA	NA	
European Union - 28	2,674,409	2,921,744	9.2	Nonbank Holding Companies, Finance/Insurance, Manufacturing