



2020 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

2020 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS



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Office of the United States Trade Representative
Ambassador Robert E. Lighthizer

LIST OF FREQUENTLY USED ACRONYMS

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

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

TABLE OF CONTENTS

FOREWORD	1
ALGERIA	7
ANGOLA.....	11
ARAB LEAGUE	17
ARGENTINA	23
AUSTRALIA	37
BAHRAIN	43
BANGLADESH	47
BOLIVIA	55
BRAZIL	59
BRUNEI DARUSSALAM	71
BURMA.....	75
CAMBODIA.....	79
CANADA	85
CHILE.....	95
CHINA.....	99
COLOMBIA	125
COSTA RICA.....	131
COTE D'IVOIRE	137
DOMINICAN REPUBLIC	141
ECUADOR	145
EGYPT.....	153
EL SALVADOR.....	159
ETHIOPIA	165
EUROPEAN UNION	171
GHANA	217
GUATEMALA	225
HONDURAS	229
HONG KONG	235
INDIA	237
INDONESIA.....	259
ISRAEL	277
JAPAN	281
JORDAN.....	299

KENYA	303
KOREA.....	313
KUWAIT	325
LAOS	329
MALAYSIA	333
MEXICO.....	341
MOROCCO	351
NEW ZEALAND.....	355
NICARAGUA.....	359
NIGERIA	365
NORWAY.....	371
OMAN	375
PAKISTAN.....	379
PANAMA	387
PARAGUAY	391
PERU	395
THE PHILIPPINES	399
QATAR.....	409
RUSSIA	413
SAUDI ARABIA	433
SINGAPORE	441
SOUTH AFRICA.....	445
SWITZERLAND	455
TAIWAN	459
THAILAND.....	469
TUNISIA	479
TURKEY	483
UKRAINE.....	493
UNITED ARAB EMIRATES.....	501
VIETNAM.....	509
APPENDIX I	521
APPENDIX II.....	525

FOREWORD

SCOPE AND COVERAGE

The 2020 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 35th in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2020 Trade Policy Agenda and 2019 Annual Report, published by the Office of the United States Trade Representative (USTR) in March.

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

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

This report discusses the largest export markets for the United States, covering 59 countries, the European Union, Taiwan, Hong Kong, and the Arab League. The discussion of Chinese trade barriers is structured and focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China section includes cross-references to other USTR reports where appropriate. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States. For example, USTR's Notorious Markets List for 2019 is still being finalized. Therefore, the absence of reference to notorious markets for any particular country in this report does not imply an absence of notorious markets nor a change in circumstance from last year's NTE Report.

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

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

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

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, customs barriers and shortcomings in trade facilitation, and other market access barriers);
- Technical barriers to trade (*e.g.*, unnecessarily trade restrictive standards, conformity assessment procedures, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products);
- Sanitary and phytosanitary measures (*e.g.*, trade restrictions implemented through unwarranted measures not based on scientific evidence);
- Subsidies, including export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets) and local content subsidies (*e.g.*, subsidies contingent on the purchase or use of domestic rather than imported goods);
- Government procurement (*e.g.*, “buy national” policies and closed bidding);
- Intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes and inadequate enforcement of intellectual property rights);
- Services barriers (*e.g.*, prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or regulatory standards, local-presence requirements, and unreasonable restrictions on what services may be offered);
- Barriers to digital trade and electronic commerce (*e.g.*, barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the provision of Internet-enabled services, and other restrictive technology requirements);
- Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);
- Competition (*e.g.*, government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country’s markets or abuse of competition laws to inhibit trade); and
- Other barriers (barriers that encompass more than one category, *e.g.*, bribery and corruption).

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements to make a determination on whether any foreign government that is a party to one of those agreements is failing to comply with that government’s obligations or is otherwise denying, within the context of a relevant agreement, “mutually

advantageous market opportunities” to U.S. telecommunication products or services suppliers. The NTE Report highlights both ongoing and emerging barriers to U.S. telecommunication services and goods exports used in the annual review called for in Section 1377.

USTR continues to vigorously scrutinize foreign labor practices and to address substandard practices that impinge on labor obligations in U.S. free trade agreements (FTAs) and deny foreign workers their internationally recognized labor rights. In addition, USTR has enhanced its monitoring and enforcement of U.S. FTA partners’ implementation and compliance efforts with respect to their obligations under the environment chapters of those agreements. To further these initiatives, USTR has implemented interagency processes for systematic information gathering and review of labor rights practices and environmental measures in FTA countries, and USTR staff regularly work with FTA countries to monitor practices, and directly engages governments and other stakeholders in its monitoring efforts. The Administration has reported on these activities in the 2020 Trade Policy Agenda and 2019 Annual Report of the President on the Trade Agreements Program.

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

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

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

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

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

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

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Endnotes:

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

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

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

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

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

ALGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Algeria was \$1.5 billion in 2019, a 55.9 percent decrease (\$1.9 billion) over 2018. U.S. goods exports to Algeria were \$999 million, down 20.8 percent (\$262 million) from the previous year. Corresponding U.S. imports from Algeria were \$2.5 billion, down 46.3 percent. Algeria was the United States' 79th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Algeria (stock) was \$3.6 billion in 2018, a 17.9 percent increase from 2017.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Algeria is not a Member of the World Trade Organization (WTO). Goods imported into Algeria currently face a range of tariffs, from zero percent to 200 percent.

Algeria's average Most-Favored Nation (MFN) applied tariff rate was 18.9 percent in 2018 (latest data available). Algeria's average MFN applied tariff rate was 23.6 percent for agricultural products and 18.2 percent for non-agricultural products in 2018 (latest data available). 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. In January 2019, citing the need to encourage local production and ease pressure on the country's foreign exchange reserves, the Algerian government implemented new tariffs of 30 percent to 200 percent (the latter extended only to ten cement tariff lines in the Harmonized System (HS) heading 25.23) on a list of more than 1,000 manufactured and agricultural goods. The few items that remain duty free are generally European Union-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 EU–Algeria Association Agreement.

Taxes

Most imported goods are subject to the 19.0 percent value-added tax (VAT), and an additional 0.3 percent tax is levied on a good if the applicable customs value exceeds DZD 20,000 (approximately \$169).

Nontariff Barriers

Import Bans

Since November 2008, Algeria's Ministry of Health has restricted the import of a number of pharmaceutical products and medical devices. In 2008, the Ministry of Health published a list of 357 pharmaceutical products whose importation is prohibited. Since 2007, the Algerian government has banned the import of used medical equipment without a special exception. The government has applied the regulation broadly to block the re-importation of machinery sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

All types of used machinery are banned from entry into Algeria.

The government effectively banned the import of fully assembled vehicles by setting import quotas at zero for 2018 and did not allow the importation of cars by dealers during 2019. Due to customs, VAT, and other taxes, vehicles cost more than double the market rates when purchased by individuals overseas and imported

All products containing pork or pork derivatives are prohibited.

Quantitative Restrictions

The Algerian government released a new book of specifications concerning the automotive industry in December 2017. Changes in regulations did not address specific import quotas but indicated the government would permit imports of automotive kits only for automotive companies that engage in local assembly or manufacturing. Minimum local integration rates for assembly plants will be 15 percent after three years and 40 percent to 60 percent after five years. In May 2019, the government announced an import quota on automobile kits for assembly of passenger vehicles retroactive to January 2019. The quota allows importation for only four companies, although subject to restrictions. A provision in the 2020 Finance Law enacted on January 1 allows individuals who supply their own foreign currency to import used car models made during the last three years.

Import Licensing

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

Customs Barriers and Trade Facilitation

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

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

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

Food Products

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

Sanitary and Phytosanitary Barriers

The Algerian government currently bans the importation, distribution, or sale of seeds that are the products of biotechnology. There is an exception for biotechnology seeds imported for research purposes. Since 2009, U.S. and Algerian veterinary authorities have engaged in negotiations on export certificates to allow for the importation of U.S. chicken-hatching eggs and day-old chicks, semen, embryos, beef cattle, and dairy breeding cattle. To date, no agreements have been concluded, and U.S. producers remain unable to export these products to Algeria.

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY PROTECTION

Algeria remained on the Priority Watch List in the 2019 Special 301 Report. Significant challenges remain with respect to fair and equitable market access for U.S. intellectual property (IP) right holders in Algeria, notably, the product import bans still in place that disadvantage U.S. pharmaceutical and medical device manufacturers. The United States acknowledges the steps Algeria has taken to raise awareness of IP issues, as well as Algeria’s engagement with the United States on improving IP protection and enforcement. However, significant IP-related concerns remain, particularly regarding the enforcement of anti-piracy statutes, such as those aimed at combating the use of unlicensed software. Also, Algeria does not provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

BARRIERS TO DIGITAL TRADE

In May 2018, Algeria signed into law legislation requiring electronic commerce platforms conducting business in Algeria to register with the government and to host their websites from a data center located in Algeria. Such localization requirements impose unnecessary costs on service suppliers, particularly foreign firms, which are more likely to depend on globally distributed data centers. Additionally, Algerian law does not allow citizens to purchase goods from outside the country, seriously hampering the ability of foreign e-commerce sites to serve Algerian customers.

INVESTMENT BARRIERS

Algeria's investment law requires Algerian ownership of at least 51 percent in all projects involving foreign investments. On January 1, Algeria enacted its 2020 Finance Law, which will eliminate the ownership requirement in non-strategic sectors. The scope of "non-strategic" sectors will be defined in separate legislation. As there is no single process for registering foreign investments, prospective investors must work with the ministry or ministries relevant to a particular project to negotiate, register, and set up their businesses. U.S. businesses have commented that the process is subject to political influence and that a lack of transparency in the decision-making process makes it difficult to determine the reasons for any delays.

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

OTHER BARRIERS

State-Owned Enterprises

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

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was \$418 million in 2019, a 80.7 percent decrease (\$1.8 billion) over 2018. U.S. goods exports to Angola were \$536 million, up 2.1 percent (\$11 million) from the previous year. Corresponding U.S. imports from Angola were \$955 million, down 64.6 percent. Angola was the United States' 99th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Angola (stock) was \$394 million in 2018, a 49.5 percent decrease from 2017.

TRADE AGREEMENTS

Angola is a member of the Southern African Development Community (SADC). Angola signed the African Continental Free Trade Agreement, which entered into force on May 30, 2019.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Angola's average Most Favored Nation (MFN) applied tariff rate was 9.2 percent in 2018 (latest data available). Angola's average MFN applied tariff rate was 18.9 percent for agricultural products and 7.6 percent for non-agricultural products in 2018 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 59.1 percent, and average bound rates of 52.7 percent for agricultural products, and 60.1 percent for non-agricultural products.

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.

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

Import fees for products entering Angola are calculated on the cost, insurance, and freight (CIF) value of the product.

Taxes

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

In October of 2019, Angola launched a 14 percent value-added tax (VAT) and revoked a 10 percent consumer tax previously imposed on all products. There are numerous product and service exemptions to the VAT. A transitional regime for the VAT will be in force until the end of 2020.

Nontariff Barriers

Import Licensing

The importation of certain goods may require authorization from specific government ministries, which can result in delays and extra costs. Importers must be registered with the Ministry of Commerce for the category of product they are importing. Only registered companies can apply for an import license, which is required for imports of sensitive products such as food, medical devices, pharmaceuticals, and agricultural inputs.

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

Import Restrictions

Presidential Decree No. 23/19, which entered into force on January 14, 2019, prohibits the importation of certain products unless the importer can demonstrate the product is not available domestically. The decree aims to restrict the country's imports in order to increase domestic economic development. This decree currently targets 54 products, mainly agricultural goods, and also applies to any imports that compete with goods produced in the Luanda-Bengo special economic zone. The United States has raised concerns about this with the Government of Angola and in multilateral venues.

Imports of foods and pharmaceutical products are subject to quality testing during customs clearance. Once imported into Angola, these products are subject to additional oversight by the Ministries of Commerce, Agriculture, and Health.

Foreign Exchange Restrictions

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

On September 15, 2018, the BNA set a maximum transaction value limit for advanced payments in foreign currency for import and export merchandise at 30 million kwanzas (approximately \$66,000). Importers must receive their merchandise within 180 days of the date of the effective foreign exchange operation. Importers must prove receipt of the merchandise within 30 days of the merchandise release from customs by delivering the receipt to the intermediary bank. The importer must also submit to the intermediary bank supporting documents for advance payments, deducting any amount paid in advance under a documentary credit, as well as the total amount invoiced in negotiation of the documents. Failure to do so may lead the bank to reject future advance payment operations. In addition, the practice of splitting up import operations by issuing various invoices for amounts less than the set limit for advance payments or for documentary collections and remittances by the same supplier will no longer be allowed.

Customs Barriers and Trade Facilitation

Administration of Angola's customs service has improved in the last few years but remains a barrier to market access. Importers still express concerns regarding the turnaround time between customs clearance and market delivery, which averages 38 days. Traders often still contract for pre-shipment inspection services from private inspection agencies.

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

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

Sanitary and Phytosanitary Barriers

Angola has not introduced a risk management scheme for veterinary and sanitary control purposes at the customs level.

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

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

Agricultural Biotechnology

Angola does not allow the use of agricultural biotechnology in production, and imports containing genetically engineered (GE) components are limited to food aid. Angola also prohibits the importation of viable GE grain or seed. The Ministry of Agriculture requires importers to present documentation certifying that their goods do not include biotechnology products. Importation of GE food is permitted when it is provided as food aid, but the product must be milled before it arrives in Angola. The Ministry of Agriculture allows, subject to regulations and controls, biotechnology imports for scientific research.

GOVERNMENT PROCUREMENT

Angola's government procurement process lacks transparency and fails to promote competition among suppliers. Information about government procurement is often not readily available from the appropriate authorities, despite the creation of a new publicly accessible electronic procurement portal and a requirement that bids for procurement allocated for in the annual state budget be advertised in the government newspaper, *Jornal de Angola*.

National Assembly Law No. 9, which entered into force on September 16, 2016, encompasses both tendering rules and rules on the performance of some contracts. This law represents an effort to reform and modernize Angola's procurement regime and is a condition of an ongoing African Development Bank loan to support the reform of the electric power sector in Angola. Under Article 53 and Annex V of the law,

tender values are authorized by specific senior government officials as follows: President of the Republic (with no value limit), the Vice-President (up to 364 million kwanzas or approximately \$800,000), Cabinet Ministers (up to 182 million kwanzas or approximately \$400,000), Ministers, Provincial Governors, public institutes, public companies, autonomous funds, and managers of budgeting units of the central government and local/regional administration (up to 72 million kwanzas or approximately \$160,000). Foreign companies are only allowed to compete directly on tenders with values greater than 182 million kwanzas (approximately \$400,000) for goods and services, and greater than 500 million kwanzas (approximately \$1,100,000) for public works. Below these values, foreign companies can only participate in government procurements as a supplier or subcontractor to an Angolan company fulfilling a government contract. A revised public procurement law, announced in July 2019, is undergoing the consultative process.

Angola is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Although the Angolan National Assembly continues to work to strengthen existing intellectual property (IP) legislation, the protection and enforcement of IP remains weak. Trade in counterfeit and pirated goods is widespread. The Ministry of Commerce tracks and monitors the seizures of counterfeit and pirated goods but publishes these statistics only on an ad-hoc basis.

INVESTMENT BARRIERS

A leading business challenge in Angola remains the scarcity of foreign exchange, and the resulting inability of foreign investors to repatriate profits and Angolan companies to pay foreign suppliers. The lack of foreign exchange is significantly impeding imports of products to this heavily import dependent market. International and domestic companies operating in Angola face significant delays securing foreign exchange approval for remittances to cover key operational expenses, including imported goods and expatriate salaries. Profit and dividend remittances are even more problematic for most companies. However, oil companies with Angolan exploration and production rights began selling foreign exchange directly to Angolan commercial banks on January 2, 2020. The decision ended a five-year policy that ensured that the international oil companies sold \$240 million in foreign exchange monthly to the BNA, which in turn resold to commercial banks in monthly and eventually daily auctions.

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

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

companies can make payments using foreign domiciled banks as long as they can show that payments are for services not provided in Angola.

Despite aging oil fields and a steady drop in oil production, the oil sector accounted for more than 95 percent of Angolan exports in 2018. Oil revenues are the dominant source of foreign exchange deposits for the Central Bank. In December 2018, the Angolan government and the International Monetary Fund announced a three-year \$3.7 billion program to help restore external and fiscal sustainability, and to enhance private sector-led economic diversification. The government faces increasing pressure from the IMF to reduce its increasing debt burden, now expected to surpass 90 percent of GDP by 2020. In early October 2019, the government abandoned its controlled adjustment of the exchange rate for a freely floating market-driven exchange regime with the goal of substantially reducing the gap between the official exchange and informal market exchange rates.

OTHER BARRIERS

Bribery and Corruption

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

ARAB LEAGUE

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

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

The Arab League boycott of Israel was the impetus for the creation of U.S. antiboycott authorities during the 1970s. U.S. antiboycott laws (the 1976 Tax Reform Act (TRA) and the Anti-boycott Act of 2018, Part II of the Export Control Reform Act of 2018, 50 USC Sections 4801-4852 (ECRA)), prohibit U.S. firms from taking certain actions with the intent to comply with foreign boycotts that the United States does not sanction. As a practical matter, foreign countries' boycotts of Israel, as reflected in government directives, laws, and regulations, continue to be the principal boycotts with which U.S. companies are concerned. The ECRA's antiboycott provisions are implemented by Part 760 of the Export Administration Regulations, 15 CFR Parts 770-774 (EAR). The Department of Commerce's Office of Antiboycott Compliance (OAC) oversees enforcement of Part 760, which prohibits certain types of conduct by U.S. persons (including businesses) undertaken in support of any unsanctioned foreign boycott maintained by a country against a country friendly to the United States. Prohibited activities include, *inter alia*, agreements by U.S. companies to refuse to do business with a boycotted country, furnishing by U.S. companies of information about business relationships with a boycotted country, and implementation by U.S. companies of letters of credit that include boycott terms. The TRA's antiboycott provisions, administered by the Department of the Treasury and the Internal Revenue Service, deny certain foreign tax benefits to companies that agree to requests from boycotting countries to participate in certain types of boycotts.

The U.S. Government's efforts to oppose the Arab League boycott include alerting appropriate officials in boycotting countries to the presence of prohibited boycott requests and the adverse impact of those requests on both U.S. firms and on Arab League members' ability to expand trade and investment ties with the United States. In this regard, U.S. Department of Commerce/OAC officials periodically visit Arab League members to consult with appropriate counterparts on antiboycott compliance issues. These consultations provide technical assistance to those counterparts to identify language in commercial documents that may constitute or be related to prohibited and/or reportable boycott requests under Part 760 of the EAR.

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; in the past, the CBO has often provided this list to Arab League member governments for their use in implementing national boycotts. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

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

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

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

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

EGYPT: Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel. In past years, Egypt has included boycott language drafted by the Arab League in documentation related to tenders funded by the Islamic Development Bank. The 2011 revolution in Egypt and subsequent political turmoil 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 rescinded 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. As a result of U.S. Government engagement with the Iraqi government, the overall number of boycott-related requests, of which the U.S. Government is aware, issued by Iraqi entities declined from 62 in 2015 to 31 in 2018, before rising slightly to 47 in 2019.

Officials from the State Department, Commerce Department, and USTR continue to engage with their respective interlocutors to ensure Iraqi officials are committed to investigating instances of boycott-related language in contracts and tenders.

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

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

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

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

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

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

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

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

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

GULF COOPERATION COUNCIL: In September 1994, the Gulf Cooperation Council (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 on occasion to surface in certain GCC member countries 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.

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, Kuwait since 2016 has refrained from establishing barriers to trade, investment, or commerce that are directed against U.S. persons operating or doing business in Israel, with Israeli entities, or in any territory controlled by Israel.

Oman: Boycott-related language occasionally appears in tender documents, notwithstanding Omani government officials' professed commitment to ensuring that such language is not included in new tender documents. Officials have removed boycott-related language when the language is brought to their attention. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation, although Omani firms typically avoid marketing consumer products that can be identified as originating from Israel. Omani diplomatic missions are prohibited from taking part in Arab League boycott meetings.

Qatar: Qatar has a boycott law but the extent to which the government enforces it is unclear. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries continue to report receiving boycott-related requests from public Qatari companies; in those instances, companies have made an effort to substitute alternative language. An Israeli trade office opened in Qatar in May 1996, but Qatar ordered the closure of that office in January 2009 in protest against 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 World Cup events.

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

The United Arab Emirates: The United Arab Emirates (UAE) maintains its recognition of the 1994 GCC decision, although U.S. firms and their subsidiaries continue to report receiving boycott-related requests from various public and private UAE entities. The UAE has not renounced the primary aspect of the boycott, but the degree to which it is enforced is unclear. Nevertheless, boycott-related requests continue to emanate from Emirati entities; in 2019, U.S. persons submitted 79 prohibited requests to the Department of Commerce, down slightly from 85 in 2018, with a majority of the requests concentrated in the construction, telecommunications, and security sectors. 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 substitution of mutually acceptable language for boycott-related terms and conditions in commercial documents. The Emirati government has taken a number of steps to eliminate prohibited boycott requests, including the issuance of a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy.

Non-Arab League Countries

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

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was \$3.2 billion in 2019, a 37.9 percent decrease (\$1.9 billion) over 2018. U.S. goods exports to Argentina were \$8.1 billion, down 18.6 percent (\$1.8 billion) from the previous year. Corresponding U.S. imports from Argentina were \$4.9 billion, up 1.7 percent. Argentina was the United States' 33rd largest goods export market in 2019.

U.S. exports of services to Argentina were an estimated \$8.2 billion in 2019 and U.S. imports were \$2.4 billion. Sales of services in Argentina by majority U.S.-owned affiliates were \$9.1 billion in 2017 (latest data available), while sales of services in the United States by majority Argentina-owned firms were \$211 million.

U.S. foreign direct investment (FDI) in Argentina (stock) was \$15.2 billion in 2018, a 1.9 percent increase from 2017. U.S. direct investment in Argentina is led by manufacturing, information services, and depository institutions.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Argentina's average Most Favored Nation (MFN) applied tariff rate was 13.6 percent in 2018 (latest data available). Argentina's average MFN applied tariff rate was 10.3 percent for agricultural products and 14.2 percent for non-agricultural products in 2018 (latest data available). Argentina has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 31.8 percent.

Argentina is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent (April 2019 data).

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

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

MERCOSUR member countries are also allowed to set import tariffs independently for some types of goods, including computer and telecommunications equipment, sugar, and some capital goods. Argentina

imposes a 14 percent tariff on imports of capital goods that are also produced domestically. Imports of certain other capital goods that are not produced domestically are subject to a reduced *ad valorem* tariff of two percent.

Argentina has bilateral agreements with Brazil and Uruguay on automobiles and automotive parts intended to provide preferential treatment among the three countries. In October 2019, Argentina and Brazil submitted to the Latin American Integration Association a revised bilateral agreement to extend the time period to implement bilateral free trade in automobiles and automotive parts from June 20, 2020 to July 1, 2029. Mexico and Argentina also have a separate bilateral trade agreement regarding quotas for automobiles and automotive parts. In March 2019, they reached agreement to retain quotas for three final years before implementing bilateral free trade in these goods.

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

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

Taxes

Argentina maintains a variety of taxes on and tax exemptions for imported goods. On December 23, 2019, the Argentine Congress passed Public Emergency Law 27,451, raising the rate of the statistical tax, a fee charged on imported goods for consumption, to 3 percent. Previously, on May 7, 2019, the Government of Argentina had raised the statistical tax rate from 0.5 percent to 2.5 percent. The 0.5 percent statistical tax rate had been in effect since 1998. Temporary imports, parts and pieces of goods, inputs used to produce goods for export, and imported goods for scientific and technological research are exempted from this tax. The tax increase will expire December 31, 2020. Decree 332/2019 established a set of caps on the dollar value of the tax faced by imported goods. The government raised this cap through Decree 99/2019 by 20 percent as follows: imports with a value of less than \$10,000 have a maximum tax of \$180; imports between \$10,000 and \$100,000 have a maximum tax of \$3,000; imports between \$100,000 and \$1,000,000 have a maximum tax of \$30,000; and imports greater than \$1,000,000 have a maximum tax of \$150,000.

In August 2012, the Argentine Tax Authority (AFIP) issued Resolution 3373, which raised the rate of certain taxes charged after import duties are levied, thereby increasing the tax burden for importers. The resolution also established a six percent income tax withholding rate on imports of all goods, except goods intended for consumption or for use by the importer. For those goods, an 11 percent income tax rate applies. Resolution 3373 also established an advance value-added tax (VAT) rate of 20 percent for imports of consumer goods and 10 percent for imports of capital goods. The advance VAT regime was most recently modified by General Resolution 4461 issued April 2019, which reestablished an advance VAT rate on imports for consumption and imports destined for production. The new advance VAT rate ranges from 10 to 20 percent. The advance VAT is paid by the importer, unless the goods are for personal use. If the products are sold in Argentina, the normal VAT rate, which is 21 percent for most consumer and capital goods, is levied after subtracting any advance VAT previously paid.

Argentina has a tax-exempt trading area called the Special Customs Area (SCA), located in Tierra del Fuego province. The SCA was established in 1972, through Law 19,640, to promote economic activity in the southern province. The SCA program, which is set to expire at the end of 2023, provides benefits for established companies that meet specific production, exportation, and employment objectives. Goods

produced in Tierra del Fuego and shipped through the SCA to other parts of Argentina are exempt from some local taxes and benefit from reductions in other taxes. On June 5, 2018, through Resolution 47/2018, Argentina added to the program products made from materials originating in the province and components fabricated in the rest of Argentina for use in the peat and lenga wood industry and the aquaculture sector. Additionally, capital and intermediate goods imported into the SCA for use in production are exempt from import duties. As of July 2017, sales of liquefied petroleum gas and natural gas produced in Tierra del Fuego and destined for consumption or industrial activities within the SCA are exempt from a 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. Affected products include mobile and satellite phones, digital video and photography cameras, GPS equipment, DVD players, computer monitors, refrigerators and freezers, heaters, televisions, and microwave ovens.

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

On July 5, 2016, the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolutions 123 and 313, providing tax exemptions for imports of capital and intermediate goods that are not locally produced for use in solar or wind energy investment projects that incorporate at least 60 percent local content in their electromechanical installations. On September 28, 2017, the Ministry of Production and the Ministry of Energy and Mining issued Joint Resolution 1-E/2017 updating the list of goods that are not locally produced. The list can be found in [Annex I and II to the Joint Resolution](#).

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. On April 20, 2018, Argentina issued Resolution 28/2018, simplifying the procedure for obtaining the tax credits. The resolution also establishes that if the national content drops below the minimum required by the resolution because of relative price changes due to exchange rate fluctuations, automotive manufacturers will not be considered non-compliant with the regime. However, the resolution sets forth that tax benefits will be suspended for the quarter when the drop was registered.

On August 9, 2019, the Ministry of Production and Labor issued Decree 555/2019, modifying the tax regime for imported goods for use in the oil and gas industry. From August 13, 2019 through December 31, 2020, used goods that are not locally produced were exempt from import taxes. If local production exists, the government will levy a tax between 7.5 percent and 35 percent on the imported goods.

Nontariff Barriers

Import Bans

Argentina prohibits the import of many used capital goods. Under the Argentina-Brazil Bilateral Automobile Pact, Argentina bans the import of used self-propelled agricultural machinery unless it is imported to be rebuilt in-country. Argentina also prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and used automotive parts. Argentina generally restricts or prohibits the importation of any

remanufactured good, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. In the case of remanufactured medical goods, imports are further restricted by the requirement that the importer of record must be the end user, such as a hospital, doctor, or clinic. These parties are generally not accustomed to importing and are not typically registered as importers.

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

Import Restrictions

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that may be imported, as follows: (1) used capital goods can only be imported directly by the end user; (2) overseas reconditioning of the goods is allowed only if performed by the original manufacturer, third-party technical appraisals are not permitted; (3) local reconditioning of the good is subject to technical appraisal to be performed only by the state-run Institute of Industrial Technology, except for aircraft-related items; (4) the imported used capital good cannot be transferred (sold or donated) for a period of four years; (5) 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. Through Decree 406/2019 issued June 6, 2019, the government exempted a list of products from the requirement to obtain the import certificate.

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.

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

Under a new tax “Por una Argentina Inclusiva y Solidaria,” all imported services purchased through travel and tourism agencies and all international transportation tickets for travel by air, land (except to countries that border Argentina), or water sold in Argentina (through a physical or online point of sale) are subject to a 30 percent tax, pursuant to Public Emergency Law 27,541, issued on December 23, 2019, and Decree 99 issued on December 28, 2019. Through Decree 99/2019, the government also established an 8 percent tax for some imported digital services that are already subject to the VAT.

Import Licensing

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

The SIMI system requires importers to submit detailed information electronically about goods to be imported into Argentina including the distinction of whether these products are subject to automatic or non-automatic import licenses. 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). Products deemed import-sensitive by the government, including goods such as automobiles, paper and cardboard, iron and steel, nuclear reactors, electrical and construction materials and parts, toys, textiles and apparel, and footwear, are subject to the non-automatic import licensing regime. The list of products subject to non-automatic licensing has been modified several times since the beginning of the SIMI system. On January 9, 2020, through Resolution 1/2020, the government moved 300 tariff lines from the automatic import licensing system to the non-automatic import licensing system. A total of 1,500 tariff lines currently are subject to non-automatic licenses. Through Resolution 1/2020, the government reduced the validity period for a non-automatic import license from 180 days to 90 days after approval.

Customs Barriers and Trade Facilitation

Argentina continues to use a system whereby authorities establish benchmark unit prices (*i.e.*, reference prices) for goods that originate in, or are imported from, specified countries, for customs valuation purposes. If a good is imported and the invoice price is lower than the reference price, Argentina requires importers to obtain an authenticated invoice. The Argentine government publishes a list of reference prices and covered countries.

Argentina reestablished an electronic monitoring system for importers (Seguimiento de Pagos de Importaciones, or SEPAIMPO) on October 28, 2019. Pursuant to Central Bank Communications A6815 and A6818, the SEPAIMPO registers import payments and dispatches to monitor compliance with capital controls imposed by the Central Bank. The SEPAIMPO system was originally created in 2010 and amended several times for price control purposes before it was repealed, effective March 6, 2018.

Certificates of Origin

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

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.

Competition

In October 2014, Argentina launched the “Ahora 12” program, which allows individuals to finance the purchase of certain domestically manufactured goods, ranging from clothing to home appliances, as well as domestic tourism, in 12 monthly installments with certain credit cards without interest. On December 1, 2016, the government launched the “Ahora 18” program, which allows individuals to finance the purchase of the same types of domestically manufactured goods and domestic tourism in 18 monthly, interest-free installments. On April 1, 2017, the government launched the “Ahora 3 y 6” program, which allows individuals to finance the purchase of clothing, footwear, certain leather goods, toys, and board games in three or six monthly, interest-free installments. On December 28, 2018, the government added LED lamps to the list of eligible products. On July 29, 2019, through Resolution 426/2019, the government extended the Ahora programs through December 31, 2019, and expanded the programs by adding to small appliances, cosmetics, and self-care products, and increased the price limit for purchases of eyeglasses and motorcycles. On December 30, 2019, the government extended the Ahora 12 program through March 31, 2020, through Resolution 26/2019.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity Assessment and Safety Certificate Requirements

Since 2013, Argentina has maintained conformity assessment requirements for electrical and electronic products that require safety certifications from Argentine certification bodies before they can enter commerce in Argentina. Although subsequent measures alleviated these testing requirements for some products, domestic testing requirements remain a source of duplicative certification, significant delays, and increased costs.

Sanitary and Phytosanitary Barriers

Poultry

Argentina does not allow imports of fresh, frozen, and chilled poultry from the United States due to concerns over Highly Pathogenic Avian Influenza (HPAI) and virulent Newcastle Disease, and because Argentina does not recognize the U.S. sanitary inspection system as equivalent to the Argentine system. Over the past several years, the United States has provided Argentina a comprehensive presentation on the status of HPAI in the United States and on the success of the U.S. Government’s mitigation and eradication programs. In addition, the United States requested that Argentina regionalize its restrictions related to HPAI in the event of future outbreaks, as recommended by the World Organization for Animal Health. The United States again has engaged with Argentina to resolve the market access issues for poultry, and in September 2019 proposed a sanitary certificate and related production requirements to ensure food safety. The United States will continue to engage with Argentina to resolve barriers to trade.

Horticultural Products

Argentina ceased issuing permits for imports of a variety of U.S. horticultural exports in 2012, without explanation or justification. Since then, the United States has worked with Argentina to reestablish access for exports of U.S. cherries and stone fruits. However, Argentina has yet to restore market access for U.S. apples, pears, grapes and berries. The United States is engaging with Argentina to establish science-based conditions that allow for the resumption of trade.

SUBSIDIES

Export Subsidies

Argentina provides full or partial tax refunds (including VAT) to exporters of consumer goods, agricultural goods, industrial goods, and processed foods.

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

GOVERNMENT PROCUREMENT

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

Argentina is not a Party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 1997.

INTELLECTUAL PROPERTY PROTECTION

Argentina remained on the Priority Watch List in the 2019 Special 301 Report. The situation for innovators in the pharmaceutical and agrochemical sectors presents significant challenges. First, the scope of patentable subject matter is significantly restricted under Argentine law. Second, there is not adequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the government in conjunction with its lengthy marketing approval process. Finally, the patent pendency backlog continues to be excessive.

In addition, the absence of sustained enforcement efforts—including under the criminal laws—sufficient to have a deterrent effect, coupled with judicial inefficiency and outdated intellectual property (IP) laws, diminishes the competitiveness of U.S. IP-intensive industries in Argentina. Despite efforts during 2017 to seize illicit goods and initiate law enforcement actions to dismantle organized crime operations in “La Salada,” one of South America’s largest black markets for counterfeit and pirated goods, the market continues in operation. The existing legislative regime and lack of enforcement hinder the ability of rights

holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal online markets. The United States will continue to monitor these issues and engage Argentina on IP matters at large.

SERVICES BARRIERS

Audiovisual Services

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

The National Institute of Cinema and Audiovisual Arts taxes foreign films screened in local movie theaters. Distributors of foreign films in Argentina must pay screening fees that are calculated based on the number and geographical locations of theaters at which the films will be screened within Argentina. Films screened in 15 or fewer movie theaters are exempted. According to Resolution 1087/2019, issued July 19, 2019, all movie theaters must project at least one domestically produced film for the entirety of one week per quarter.

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.

Express Delivery

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. As of April 1, 2019, non-commercial mail shipments with a value of \$3,000 or less and a weight not greater than 20 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. Pursuant to Decree 221/2019, the government increased the tax-free annual limit on items purchased through this program. Consumers can purchase goods valued at up to \$50 per month tax free, with an annual tax-free limit of \$600, compared to the previous regime that applied a 50 percent tax on all but the first order up to \$25. If the monthly purchase total exceeds \$50, the consumer must pay a 50 percent tax on the value above the \$50 threshold. Non-commercial courier shipments with a value of \$1,000 or less and a weight not greater than 50 kilograms are exempt from import licensing and other import requirements, subject to certain conditions, including an annual limit of five shipments per person. As of June 2, 2018, through General Resolution 4259, commercial and non-commercial courier shipments up to \$3,000 are able to avoid the use of a broker for the customs declaration. Any shipments over \$3,000 require the use of a customs broker.

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.

Insurance Services

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

The SSN requires that all investments and cash equivalents held by locally registered insurance companies be located in Argentina. In May 2019, the SSN issued Resolution 515, establishing that each insurance company must invest a minimum of 5 percent (to a maximum of 20 percent) of its portfolio for financing of small- and medium-sized enterprises.

Telecommunications Services

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

INVESTMENT BARRIERS

Foreign Exchange and Capital Controls

Beginning in September 2019, the Argentine Central Bank issued a series of decrees and norms regulating access to foreign exchange markets to mitigate the financial crisis. This series of measures that began with Decree 609/2019 imposes numerous restrictions.

Regarding the individuals' ability to purchase dollars, as of October 28 and pursuant to Communication A6815/2019, Argentine individuals can purchase no more than \$200 per month on a rolling monthly basis if the purchase is done through the banking system, or \$100 per month if the purchase is made in cash. Purchases above that amount require Central Bank approval. Pursuant to Public Emergency Law 27,541, issued December 23, 2019, all dollar purchases will be subject to a 30 percent tax.

All individual expenses incurred abroad, in person or online, including international online purchases from Argentina, paid with credit or debit cards, are subject to a 30 percent tax, pursuant to Article 36 of Public Emergency Law 27,541.

Non-Argentine residents are required to obtain prior Central Bank approval to purchase in excess of \$100 per month, except for certain bilateral or international organizations, institutions and agencies, diplomatic representation, and foreign tribunals.

Regarding cash withdrawals made abroad, as of October 28, Communication A6815 limits cash withdrawals made abroad with local debit cards to only foreign currency bank accounts owned by the client in Argentina. Pursuant to Communication A6823, cash advances made abroad from local credit cards are limited to a maximum of \$50 per transaction.

Companies and individuals will need to obtain prior clearance from the Central Bank before transferring funds abroad (including dividend payments or other distributions abroad, or to pay for services rendered to a company by foreign affiliates). In the case of individuals, if transfers are made from their own foreign

currency accounts in Argentina to their own accounts abroad, they do not need to obtain Central Bank approval. Through Communication A6869 issued by the Central Bank on January 16, 2020, companies will be able to repatriate dividends without Central Bank authorization equivalent to a maximum of 30 percent of new foreign direct investment made by the company in the country.

Exporters of goods are required to transfer to Argentina and settle in pesos in the foreign currency market the proceeds from exports made as of September 2, 2019. Exporters must settle according to the following terms: exporters with affiliates (irrespective of the type of good exported) and exporters of certain goods (including certain cereals, seeds, minerals, and precious metals) must convert their foreign currency proceeds to pesos within 15 days (or 30 days for some products) after the issuance of the permit for shipment; other exporters have 180 days to settle in pesos. Irrespective of these deadlines, exporters must comply with the obligation to transfer the funds to Argentina and settle in pesos within five days from the actual collection.

Pursuant to Decree 661 issued on September 20, 2019, all export tax refunds are subject to liquidation in the local foreign exchange market. This measure complements Decree 609/2019 that requires all proceeds from exports to be settled in Argentine pesos.

Payments for imports of goods and services from third parties require Central Bank approval if the company needs to purchase foreign currency. Payment of imports of goods and services from affiliates for an amount exceeding \$2 million per month are subject to prior approval to purchase that foreign currency from the Central Bank.

Argentine residents are required to transfer to Argentina and settle in pesos the proceeds from services exports rendered to non-Argentine residents that are paid in foreign currency either in Argentina or abroad, within five business days from collection thereof.

Pre-cancellation of debt coming due abroad in more than three business days requires Central Bank approval to purchase dollars.

Local Content Requirements

Argentina maintains certain localization measures aimed at encouraging domestic production. Resolutions 123 and 313, issued in July 2016, allow companies to obtain tax benefits on purchases of solar or wind energy equipment for use in investment projects that incorporate at least 60 percent local content in their electromechanical installations. In cases in which local supply is insufficient to reach the 60 percent threshold, the threshold can be reduced to 30 percent. The updated list of tax-exempt goods under the renewable energy regime and the technical criteria used to calculate the local content is detailed in Annex I of Joint Resolution 1/2017.

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

Debt

The government of Argentina deferred the maturities of certain short-term government debt as of August 29, 2019 through Decree 596/2019, later amended by Decree 609. Under the new terms, institutional bondholders will receive 15 percent of the face value at the original maturity, an additional 25 percent at three months, and the remaining 60 percent six months from maturity. Individual bondholders will still receive on-time repayment in full. The measures did not affect the currency of denomination or principal or interest under the original terms of the issuance.

The government announced on August 28, 2019 its intention to reach a voluntary agreement with private sector creditors to extend the maturities of medium- and long-term international law bonds by means of the collective action clauses included in those bonds.

On January 29, 2020, the government published a timeline on their external debt restructuring process. The timeline established a deadline of March 31, 2020, to conclude debt negotiations with external private creditors.

On March 10 2020, the government published a list of international law/foreign currency bonds amounting to \$68.8 billion eligible for a proposed restructuring.

OTHER BARRIERS

Export Policies

Argentina maintains export taxes on most exports of goods and services. As of December 14, 2019, through Decree 37/2019, the government set the export tax rate on goods at 12 percent, with several exceptions. Products listed in Annex II of Decree 37 are subject to a 9 percent export tax. Products that were listed in [Annex II of Decree 793](#), issued September 4, 2018, but that were not also included in Annex II of Decree 37/2019, are required to pay an export tax of three Argentine pesos per dollar exported.

On December 23, 2019, through Public Emergency Law 27,541, the government established export tax ceilings on exports of certain agricultural commodities, industrial products, oil, gas, minerals, and services. The description of products affected by this increase can be viewed in [Article 52](#). In the case of exports of services, the maximum tax that applies is 5 percent. Micro and small enterprises exporting less than \$600,000 in services per year are exempted from the tax, and those exporting more than \$600,000 are required to pay the export tax on exports above the \$600,000 threshold. Goods produced in and exported from the Special Customs Area (SCA) located in Tierra del Fuego province are exempt from export taxes.

Argentina maintains additional percentage-based export taxes on a range of products. Annex I of Decree 1126/2017 and its modifications detail the full list of additional export duties applied in Argentina. Soybeans, soy meal, and soy oil are taxed at 18 percent; leathers at 5 and 10 percent; cork at 10 and 5 percent; paper and cardboard waste for recycling at 20 percent; and alloy steel waste at 5 percent. On May 28, 2018, the government issued Decree 486, increasing the export tax on biodiesel from 8 percent to 15 percent as of July 1, 2018.

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. The government has extended the ban for 360 days each year since then, most recently on September 24, 2019, through Decree 664/2019. According to Decree 160/2015, issued on December 18, 2015, iron and steel scrap are subject to a 5 percent export tax, but this tax is not being collected due to the current export ban on these products.

Export Registrations and Permits

Since December 29, 2015, Argentina has required exporters of certain grains, pulses, cotton, 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. On October 3, 2019, the Ministry of Agriculture, Livestock, and Fisheries released resolution 78/2019 that updated regulations for DJVE and reduced the term of validity for short-term DJVE from 45 to 30 days. Exporters are now required to pay 90 percent of the export tax within five days of registration. For short-term DJVE, exporters must pay the full export tax immediately upon approval of the DJVE registration, based on the official Free On Board value on the date of the sale.

Consumer Goods Price Control Program

In January 2014, the Argentine government launched a consumer goods price control program called “Precios Cuidados.” Under the voluntary program, participating consumer goods manufacturers and supermarkets agreed to adhere to price caps on nearly 200 basic consumer goods. Since January 2016, the program has been extended several times, with prices adjusted for inflation and additional products added to the program. On September 28, 2018, the Secretary of Domestic Trade issued Disposition 46/2018, including small retail stores in the program. On January 7, 2020, the government extended the program through January 31, 2021, and changed the products included in the program, reducing the number of products to 310, subject to a quarterly review.

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.

Supply Law

In September 2014, Argentina amended the 1974 National Supply Law to expand the ability of the government to regulate private enterprises by setting minimum and maximum prices and profit margins for goods and services at any stage of economic activity. Private companies may be subject to fines and temporary closure if the government determines they are not complying with the law. Although the law is still in effect, the U.S. Government has not received any reports of it being applied since December 2015.

Pension System

In 2008, the Argentine Congress approved a bill to nationalize Argentina’s private pension system and transfer pension assets to the government social security agency. Compensation to investors in the

privatized pension system, including to U.S. investors, is still pending and subject to ongoing international arbitration.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was \$15.2 billion in 2019, a 0.1 percent decrease (\$16 million) over 2018. U.S. goods exports to Australia were \$26.0 billion, up 2.8 percent (\$715 million) from the previous year. Corresponding U.S. imports from Australia were \$10.9 billion, up 7.2 percent. Australia was the United States' 16th largest goods export market in 2019.

U.S. exports of services to Australia were an estimated \$21.3 billion in 2019 and U.S. imports were \$8.6 billion. Sales of services in Australia by majority U.S.-owned affiliates were \$48.1 billion in 2017 (latest data available), while sales of services in the United States by majority Australia-owned firms were \$14.3 billion.

U.S. foreign direct investment (FDI) in Australia (stock) was \$163.0 billion in 2018, a 3.5 percent decrease from 2017. U.S. direct investment in Australia is led by nonbank holding companies, manufacturing, and mining.

TRADE AGREEMENTS

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

Australia also has free trade agreements in force with Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Singapore, and Thailand, as well as with the Association of Southeast Asian Nations (ASEAN), and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which entered into force on December 30, 2019, expanded Australia's free trade agreement network to include Canada, Mexico, and Peru. In 2019, Australia ratified the Indonesia–Australia Comprehensive Economic Partnership Agreement, but this agreement has not entered into force. Additionally, in December 2018, Australia ratified the Pacific Agreement on Closer Economic Relations (PACER Plus) with nine Pacific Island nations and New Zealand, but the agreement has not entered into force as of the end of 2019. Australia is negotiating free trade agreements with the European Union and the Pacific Alliance.

IMPORT POLICIES

Taxes

Low Value Goods Taxes

In 2017, an amendment was made to the A New Tax System (Goods and Services Tax) Act 1999 to apply a 10 percent goods and services tax (GST) to low value goods. The legislation, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, placed the onus of GST collection and remittance on overseas vendors, including online marketplaces or other platforms. The legislation on low value goods charges GST on imported goods valued at A\$1,000 or less (approximately \$683) sold to consumers in Australia as of July 1, 2018. Vendors with annual sales to Australian customers in excess of A\$75,000 (approximately \$51,200) and to non-profits in excess of A\$150,000 (approximately \$102,400) are subject to registration requirements and must charge GST on sales of low value imports. The United States continues to monitor the implementation of the amendment.

SANITARY AND PHYTOSANITARY BARRIERS

Animal Health

Beef and Beef Products

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

For fresh (chilled or frozen) beef and beef products, the Australian government, in December 2015, began the review of its import requirements for three countries that applied for export to Australia: the United States, Japan, and the Netherlands. This review was concluded in August 2017. In July 2019, the Australian government conducted an audit of the U.S. food safety system. The results of that audit were still being compiled as of the end of 2019. The United States continues to engage the Australian government to reach an agreement on the terms and conditions for U.S. fresh beef and beef product exports to Australia.

Pork

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

Poultry

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

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

Agriculture and Water Resources sought further information from the United States on the prevalence of infectious bursal disease virus (IBDV) in U.S. turkeys. Australia is also reviewing the time and temperature requirements for cooked turkey. A study is underway to evaluate the prevalence of IBDV in U.S. commercial turkey flocks. A letter outlining the suggested approach to the prevalence study was sent to Australia in January 2018. The United States has identified this issue as a high priority, and will continue to work with Australia to gain meaningful commercial market access for cooked turkey meat.

Plant Health

Apples and Pears

Australia prohibits the importation of apples from the United States based on concerns regarding several pests. In October 2009, Australia published a pest risk analysis for apples from the United States and identified three additional fungal pathogens of concern to Australian regulatory authorities. In December 2014, the United States provided information to Australia to support the U.S. systems approach to address pest risk issues. The Australian government requested additional information. Australia has agreed to provide information on its process for completing the import risk analysis for U.S. apples and, in November 2018, announced it was commencing a new risk analysis for fresh apples from the Pacific Northwest states. A draft pest risk analysis is expected to be released in 2020 for public consultation. Australia also prohibits the importation of pears from the United States for phytosanitary issues, including fire blight.

GOVERNMENT PROCUREMENT

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

Revised federal government procurement rules issued in 2017 require agencies to consider the “national economic benefit” of all contracts awarded over a value of A\$4 million (approximately \$3 million). While little guidance has been given on how “national economic benefit” should be interpreted, some foreign companies have expressed concern about the consistency of this requirement with Australia’s trade obligations. The state of Queensland also introduced a “Buy Queensland” procurement policy in 2017. In the media statement for the policy, the Queensland government stated that it “would no longer be constrained or bound by free trade agreements that have seen jobs go off-shore or interstate.” Other Australian states mandate certain local content requirements on a project-by-project basis. The United States will continue to engage Australia to ensure that FTA covered procurements are conducted consistent with that agreement.

Australia became a party to the World Trade Organization Agreement on Government Procurement in May 2019.

INTELLECTUAL PROPERTY PROTECTION

Australia generally provides strong intellectual property (IP) protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting. Under the FTA, Australia must provide that a pharmaceutical product patent owner be notified of a request for marketing approval by a third party for a product claimed by that patent. Australia must also 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 and the Australian government is reviewing notification procedures as of 2019. The United States has also raised concerns about provisions in Australian law that

impose a potential significant burden on the enjoyment of patent rights, specifically on the owners of pharmaceutical patents.

SERVICES BARRIERS

Audiovisual Services

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

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

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

BARRIERS TO DIGITAL TRADE

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

Internet Services

Local Content Requirements

As noted above, quotas and mandatory expenditure requirements aimed at promoting Australian audiovisual production do not apply to online platforms in Australia. However, the government of Australia, through various parliamentary inquiries, has sought stakeholder views on whether to extend mandatory content funding mechanisms, which are applicable to traditional distribution platforms and to online platforms offering video streaming services. In March 2019, the Senate Communications Committee released the report on its inquiry into the "Economic and Cultural Value of Australian Content on Broadcast, Radio and Streaming Services," which included an analysis of various options to promote local content on streaming services. However, no final recommendation on specific options has emerged, and as of 2019 there is no legislation before parliament that would affect any such options. The United States will monitor any further inquiries, recommendations, or legislation to ensure consistency with FTA provisions in this sector, which require any new discriminatory requirements to be based on a finding that Australian content is not reasonably available to Australian consumers.

Online Content

In April 2019, Australia enacted the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019. The Act requires that Internet service providers, or companies that provide Internet content or hosting services, proactively refer any abhorrent violent material that records or streams violent conduct that has occurred or is occurring in Australia to Australian law enforcement and “expeditiously” remove any abhorrent violent material that is capable of being accessed within Australia. USTR raised concerns regarding the rushed passage of the Act, which precluded effective stakeholder consultation. USTR will continue to monitor implementation of the Act.

Digital Services Tax

In October 2018, Australia announced it was considering options for taxing the digital economy, including consideration of a unilateral digital services tax that would apply to suppliers of certain digital services. However, in March 2019 the Australian government announced that it would focus on pursuing a long-term consensus solution at the Organization for Economic Co-operation and Development (OECD), noting overwhelming stakeholder support for this option. In July 2017, Australia applied its VAT to the digital services that would be covered by a unilateral digital services tax.

INVESTMENT BARRIERS

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975 and supported by Australia’s Foreign Investment Policy. The Foreign Investment Review Board (FIRB), a division of Australia’s Treasury, screens potential foreign investments in Australia above a threshold value that stands at A\$266 million (approximately \$181 million), as of January 1, 2019. The FIRB also screens all potential foreign investments in sensitive areas, including the media, telecommunications, transport, and defense sectors, as well as select extractive industries and operation of nuclear facilities. Additionally, foreign persons must get approval before acquiring residential land, regardless of the value. All investments by foreign government investors must also get approval by the FIRB. Based on advice from the FIRB, the Treasurer of Australia may deny or place conditions on the approval of particular investments on national interest grounds.

Australia has made a number of changes to foreign investment rules and capabilities to address national security risks. A national Critical Infrastructure Centre was established in 2017, providing (among other responsibilities) advice to the Treasurer regarding foreign investment in designated critical infrastructure. In 2018, the Australian government introduced new legislation to increase the scrutiny of investment in land and electricity assets. Finally, although data is not formally considered to be critical infrastructure, in August 2019, the FIRB Chairman announced that investments in assets containing or generating personal data will undergo additional scrutiny.

Under the United States-Australia FTA, all U.S. greenfield investments are exempt from FIRB screening. Under the FTA, non-greenfield U.S. investments are screened above a higher threshold value, which stands at A\$1.154 billion (approximately \$800 million) for non-sensitive investments and A\$266 million (approximately \$181 million) for sensitive investments. U.S. investors are subject to a zero dollar threshold for investments in residential land or vacant commercial land and for any acquisition providing greater than five percent ownership in any media enterprise. The FIRB has generally approved U.S. investments. An instance in which one of Australia’s provincial governments cancelled the license for an existing project backed in part by U.S. investors has prompted concern about increased risks facing foreign investors in Australia.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade surplus with Bahrain was \$363 million in 2019, a 65.5 percent decrease (\$688 million) over 2018. U.S. goods exports to Bahrain were \$1.4 billion, down 31.1 percent (\$634 million) from the previous year. Corresponding U.S. imports from Bahrain were \$1.0 billion, up 5.4 percent. Bahrain was the United States' 72nd largest goods export market in 2019.

U.S. exports of services to Bahrain were an estimated \$395 million in 2018 (latest data available) and U.S. imports were \$760 million. Sales of services in Bahrain by majority U.S.-owned affiliates were \$286 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Bahrain (stock) was \$647 million in 2018, a 53.0 percent increase from 2017.

FREE TRADE AGREEMENTS

The United States-Bahrain Free Trade Agreement

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

IMPORT POLICIES

Taxes

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—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. Bahrain began a three phase VAT implementation in January 2019; the compliance deadline for the final tranche, comprised of small to medium-sized enterprises, was December 31, 2019.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Degradable Plastics

In September 2018, Bahrain notified to the World Trade Organization (WTO) a new technical regulation on degradable plastic products. Bahrain has limited its implementation to the first phase of the regulation, covering plastic shopping bags, which took effect in July 2019. Bahrain has stated it plans to notify future

changes in product coverage under the degradable plastic products regulation to the WTO. Polyethylene and polypropylene sheets on rolls such as table covers will be regulated effective July 25, 2020.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

GOVERNMENT PROCUREMENT

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

Bahrain is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its FTA obligations, Bahrain enacted several laws to improve protection and enforcement of 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 (IP) protection and enforcement is mixed. Over the past several years, Bahrain has launched several campaigns to block illegal signals and prohibit the sale of decoding devices in order to combat piracy of cable and satellite television and has launched several public awareness campaigns regarding copyright piracy. However, many counterfeit consumer goods continue to be sold openly.

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

OTHER BARRIERS

On January 1, 2019, Bahrain introduced a ban on the importation of plastic waste by air, land, or sea.

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 \$4.4 billion in 2019, an 8.4 percent increase (\$340 million) over 2018. U.S. goods exports to Bangladesh were \$2.3 billion, up 11.8 percent (\$246 million) from the previous year. Corresponding U.S. imports from Bangladesh were \$6.7 billion, up 9.6 percent. Bangladesh was the United States' 60th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Bangladesh (stock) was \$513 million in 2018, an 11.5 percent increase from 2017.

TRADE AGREEMENTS

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

Bangladesh has not signed any bilateral free trade agreements (FTAs), but has started initial FTA discussions with a number of countries, including Bhutan, Brazil, China, India, Indonesia, Sri Lanka, Thailand, and Turkey.

IMPORT POLICIES

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

Tariffs and Taxes

Tariffs

Bangladesh's average Most-Favored Nation (MFN) applied tariff rate was 14 percent in 2018 (latest data available). Bangladesh's average MFN applied tariff rate was 17.5 percent for agricultural products and 13.4 percent for non-agricultural products in 2018 (latest data available). Bangladesh has bound only 16.6 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 156 percent.

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

Products and sectors that are generally exempt from tariffs include 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. Commercial samples in reasonable quantities can be carried by passengers during travel and are not subject to tariffs; however, commercial samples are subject to tariffs if sent by courier.

Taxes

Other charges applicable to imports are an advance income tax of five percent, a value-added tax (VAT) of zero percent to 15 percent, with exemptions for input materials, and a supplementary duty of zero percent to 500 percent, which applies to certain new vehicles or luxury items such as cigarettes, alcohol, and perfume. VAT and supplementary duty are also charged on certain domestically produced goods. On July 1, 2019, Bangladesh implemented a new VAT law to simplify VAT rates to four possible rates (5 percent, 7.5 percent, 10 percent, and 15 percent).

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

Nontariff Barriers

Quantitative Restrictions

Commercial importers and private industrial consumers (with the exception of those located in EPZs) must register with the Chief Controller of Imports and Exports (CCIE) in the Ministry of Commerce. The Chief Controller issues import registration certificates (IRC). According to CCIE policy, an IRC is issued within three working 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

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

All imports, except for capital machinery and raw materials for industrial use, must be supported by a letter of credit (LoC). A LoC authorization form and a cash bond, ranging from 10 percent to 100 percent of the value of the imported good, are required. Effective October 31, 2019, under instruction from the National Board of Revenue (NBR), Bangladesh Bank (the country's central bank authority), has directed all dealer banks not to allow importers to establish a LoC if the LoC authorization form does not have a 13-digit VAT registration number. Other documents required for importation include: a bill of lading or airway bill, commercial invoice or packing list, and certificate of origin. For certain imported goods or services, additional certifications or import permits related to health, security, or other matters are required by the relevant government agencies. Goods imported by or for the public sector generally require less documentation but the specific amount of documentation required varies from sector to sector.

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

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

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

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

Registration of Medical Devices

U.S. firms exporting medical devices to Bangladesh face registration challenges with the implementation of the Registration Guidelines for Medical Devices Bangladesh 2015, most notably the treatment of medical devices as pharmaceuticals. Also, Bangladesh is currently registering medical devices on a product-by-product basis. These policies unnecessarily complicate marketing approval procedures leading to delays for medical devices. Additionally, industry has expressed concern regarding prospective price controls for medical devices.

Customs Barriers and Trade Facilitation

Bangladesh has not yet notified its customs valuation legislation to the WTO and has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

SANITARY AND PHYTOSANITARY BARRIERS

Fumigation of U.S. Origin Cotton

Bangladesh requires fumigation of imported U.S. cotton at the port of entry, allegedly to protect locally-grown cotton from possible boll weevil infestation. U.S. cotton exporters and Bangladeshi cotton importers assert that this requirement is unnecessary because of mitigation measures taken prior to export to eliminate any presence of the pest in larval or adult form. These measures include ginning, cleaning, and bale compression. This fumigation is also unnecessary because the United States has eradicated boll weevil from all cotton-producing areas of the United States, with the exception of a small region in southern Texas. This requirement adds three to four cents in cost per bale and delays access to the importers for a period of no less than 72 hours while the cotton is being held for fumigation, which hinders increased demand for U.S. cotton. Technical experts from the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), along with their Bangladeshi counterparts, visited the Chittagong port in September 2018 to inspect imported U.S. cotton and demonstrated there was no presence of boll weevil. As recently as August 2019, the Ministry of Agriculture said Bangladesh would continue to require fumigation of imported U.S. cotton. The U.S. Government continues to press the government of Bangladesh to eliminate the unnecessary fumigation requirement for U.S. cotton.

SUBSIDIES

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

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

GOVERNMENT PROCUREMENT

Government procurement is primarily undertaken through public tenders under the Public Procurement Act of 2006 and conducted by the Central Procurement Technical Unit (CPTU). There are no “buy national” policies. The government of Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are very common. Bangladesh launched a national electronic government procurement portal, but U.S. companies have raised concerns about the use of outdated technical specifications, the structuring of specifications to favor preferred bidders, and a lack of overall transparency in public tenders. Several U.S. companies have claimed that their foreign competitors often use their local partners to influence the procurement process and to block awards to otherwise competitive U.S. company bids. There have been many instances of alleged bid rigging in government tenders in Bangladesh, a few of which involved U.S. companies. U.S. companies complain about lack of transparency in the bidding process and about losing contracts on which they believed they had demonstrated far superior experience, technical expertise, and higher value than the companies chosen.

Bangladesh is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Bangladesh continues to make slow progress towards establishing a comprehensive legal framework to adequately and effectively protect and enforce intellectual property (IP). The Department of Patents, Designs and Trademarks (DPDT) drafted a new Patent Act in 2014, which is under review by the Ministry of Law. Additionally, the DPDT has drafted an “Innovation & IP Policy Strategy.” Bangladesh reportedly failed to consult all relevant stakeholders and the policy lacks wide acceptance or support.

The government of Bangladesh devotes limited resources to IP protection and enforcement. Counterfeit and pirated goods are readily available. A number of U.S. firms, including pharmaceutical companies, manufacturers of consumer goods, and software firms have reported violations of their IP. Investors note police are willing to investigate counterfeit goods distributors when informed but are unlikely to initiate independent investigations. In addition, right holders have raised concerns about fairness of court decisions in IP cases. In 2018, the government of Bangladesh issued for public comment draft Customs Rules that are intended to streamline IP enforcement.

In order to support NBR efforts on these draft Customs Rules, in August 2019, the United States Patent and Trademark Office (USPTO) organized and hosted a week-long training program in Washington, DC for Bangladesh’s top 20 Customs officials to discuss IP enforcement best practices.

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

SERVICES BARRIERS

Bangladesh does not allow foreign companies to provide services in four sectors that are reserved for government investment: (1) arms, ammunitions, and other defense equipment and machinery; (2) forest plantation and mechanized extraction within the bounds of reserved forests; (3) nuclear energy; and (4) currency note printing. In 22 other sectors, foreign companies must obtain permission from relevant ministries or authorities before providing services. New market entrants face significant restrictions in most regulated commercial fields, including telecommunications, banking, and insurance. 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 Bangladesh Bank.

Audiovisual Services

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

Financial Services

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

Currently, only ATM transactions are being routed through the NPSB. However, Bangladesh intends to expand the system. In September 2018, Bangladesh Bank ordered banks to connect their POS terminals with the National Payment Switch by December 2019. However, the government of Bangladesh has decided not to bring impending regulations on routing into force. Instead, the government will issue a new decree after public comments are taken in account. Although Bangladesh Bank has again postponed the implementation date for mandatory connection, its position as both regulator and market participant can create a formidable barrier for competitors to the NPSB.

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

Insurance Services

Section 22 of the Insurance Act of 2010 currently allows foreign investors to buy or hold up to 60 percent equity in a domestically registered insurance company. Additionally, foreign companies, operating a branch of an overseas registered firm can provide insurance in the market. However, U.S. companies have reported that, notwithstanding Section 22, the government of Bangladesh is not permitting new exclusively foreign-

owned companies into the insurance market. Moreover, permission to open branch offices can be politically influenced.

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

Telecommunications Services

The Bangladesh Telecommunication Regulatory Commission (BTRC) limits foreign equity in the telecommunications service suppliers to a maximum of 60 percent. According to the National Telecommunication Policy, foreign investors in the telecommunications sector are encouraged to demonstrate their commitment to Bangladesh by forming joint ventures with local companies. Frequent changes to regulations and tax policy in the sector increase business uncertainty, thereby decreasing the incentive to invest.

Bangladesh imposes the highest taxes on mobile telecommunications services of any country in South Asia. Under the present tax regime, the mobile industry is taxed like a supplier of luxury goods, with 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 BDT 50 million (approximately \$590,000) as an annual licensing fee. A tax of BDT 200 (approximately \$2.50) is imposed on the sale of subscriber identification model (SIM) cards, and a three percent supplementary duty is applied to charges for phone usage. Smartphones are subject to a 25 percent duty while all other handsets are subject to a 10 percent import duty. The corporate income tax rate for telecommunications companies listed in the Bangladeshi capital market is 40 percent, while the corporate income tax rate for mobile service providers that are not publicly listed in the Bangladesh capital market is 45 percent.

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

BARRIERS TO DIGITAL TRADE

The Digital Security Act of 2018 criminalizes a wide range of online activity, creating challenges for Internet-based platforms and digital media firms. The Act criminalizes publication of information online that hampers the nation, tarnishes the image of the state, spreads rumors, or hurts religious sentiment. The Act provides for criminal penalties up to \$120,000 and up to 14 years in prison for certain infractions.

The Information and Communication Technology Act of 2006 (amended in 2013) authorizes the government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under the Act, the government of Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. On several occasions in 2018, in the run up to the national elections, the BTRC ordered mobile operators to limit data transmissions for political reasons, and on November 19, 2018 instructed all international Internet gateway licensees to temporarily block a U.S. Voice over IP service supplier; the blockage lasted for one day. Such interference, even on a temporary basis, undermines the value of Internet-based services, decreasing the incentive to invest and raising costs for firms in the market.

The Bangladesh Road Transport Authority's (BRTA) Ride-Sharing Service Guidelines came into force in March 2018. These new regulations included requirements that app-based transportation service providers maintain data servers within Bangladesh. The guidelines also require that vehicles be registered for at least one year before providing ride-sharing services, and that drivers may only drive for one app-based service. BRTA has not enforced all requirements of the Guidelines, but the threat of possible enforcement raises uncertainty for businesses providing app-based transportation services.

Effective July 1, 2019, the NBR imposed a 15 percent VAT on foreign satellite television service suppliers and social media service suppliers and required such firms to open local offices or appoint local representatives to facilitate tax collection.

INVESTMENT BARRIERS

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

Bureaucratic inefficiencies often discourage investment in Bangladesh. According to World Bank figures, Bangladesh's foreign direct investment as a percentage of GDP in 2018 (latest data available) was only 1.07 percent. Overlapping administrative procedures and a lack of transparency in regulatory and administrative systems can frustrate investors seeking to undertake projects in the country. Frequent transfers of top- and mid-level officials in various Bangladeshi ministries, directorates, and departments are disruptive and prevent timely implementation of both strategic reform initiatives and routine duties.

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

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

In 2016, the BIDA was formed by merging the Board of Investment and the Privatization Commission. BIDA's goal is to push for implementation of the One-Stop Service Act and to become Bangladesh's one-stop private investment promotion and facilitation agency. Bureaucratic inefficiencies often discourage investment in Bangladesh.

ANTICOMPETITIVE PRACTICES

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

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

Sectors such as railways, telecommunications, and other public utility services have generated monopolies leading to anticompetitive structures. The Bangladeshi railway system remains a state-owned monopoly requiring large subsidies because of poor management and lack of fare enforcement.

In some sectors, syndicate leaders fix prices and control the supply chain to maximize their profits. For example, fertilizer is rarely available in the open market at the government fixed price because sellers conspire to sell it at a higher price.

OTHER BARRIERS

Corruption

According to major ranking institutions such as Transparency International, Bangladesh is among the most corrupt countries in the world. Bribery and extortion in business are some of the features of this reality. U.S. companies have complained about long delays in obtaining approval of licenses and bids, as compared to other players. While the government has established legislation to combat bribery, embezzlement, and other forms of corruption, enforcement is inconsistent. There have been continuous efforts to water down public procurement rules and proposals to curb the independence of the Anti-Corruption Commission (ACC), the main institutional anticorruption watchdog. A 2013 amendment to the ACC Law removed the ACC's authority to sue public servants without prior government permission. Parliament passed the Sarkari Chakori Ain Bill (Government Job Act) in October 2018. The Act made it mandatory for ACC to seek permission of the authorities concerned before arresting any government officer. The Act further limits the efficiency of the ACC in investigating corruption allegations against government officers. While the ACC has increased pursuit of cases against lower-level government officials and some higher-level officials, there remains a large backlog of cases. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive bribery, bribery of foreign public officials, money laundering, and using public resources or confidential state information for private gain. However, anticorruption legislation is inadequately enforced. Facilitation payments and gifts are illegal, but common in practice.

Export Policies

In the fiscal year 2018 to 2019, the government of Bangladesh imposed export duties on 18 product categories, including: rice bran, cigarettes, liquefied petroleum gas cylinders (capacity below 5,000 liters), cotton waste, and ceramic bricks.

BOLIVIA

TRADE SUMMARY

The U.S. goods trade surplus with Bolivia was \$83 million in 2019, a 9.7 percent increase (\$7 million) over 2018. U.S. goods exports to Bolivia were \$538 million, down 4.2 percent (\$24 million) from the previous year. Corresponding U.S. imports from Bolivia were \$455 million, down 6.4 percent. Bolivia was the United States' 98th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Bolivia (stock) was \$618 million in 2018, a 3.3 percent increase from 2017.

IMPORT POLICIES

Bolivia's constitution, adopted in February 2009, establishes broad guidelines to give priority to local production. However, to date, the only legislation enacted with respect to this prioritization is Law 144 (the Productive Revolution Law), approved on June 26, 2011. The Productive Revolution Law supports communal groups and unions of small producers in an effort to bolster domestic food production. It allows the production, importation, and commercialization of genetically modified products, though it requires labeling. As of January 2018, all genetically modified products must include a yellow, triangular shaped-label. The Mother Earth Law (Ley de Madre Tierra), enacted on October 15, 2012, calls for the phased elimination of all genetically modified products from the Bolivian marketplace. However, implementing regulations have not yet been issued due in part to objections from Bolivian industry. A transitional government that came into office in November 2019 has expressed interest in reforming many of what it considers onerous import policies, including efforts to reform guidelines on biotechnology regulations. However, legislative changes are not expected until after a newly elected government takes office in mid-2020.

Tariffs

Bolivia's average Most Favored Nation (MFN) applied tariff rate was 11.8 percent in 2018 (latest data available). Bolivia's average MFN applied tariff rate was 13.1 percent for agricultural products and 11.6 percent for non-agricultural products in 2018 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 40 percent.

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

Nontariff Barriers

Import Licensing

Bolivia maintains a broad import licensing regime for more than 700 ten-digit tariff lines identified as affecting public health or State security. Import licenses are required for the importation of arms and ammunition, certain articles of clothing and furniture, coins and other monetary instruments, drugs and controlled substances, gambling games and machines, mineral and chemical products, environmentally hazardous products, certain books, transportation and communication products, and washing machines. Article 9, *General provisions of the import and temporary admission customs regimes*, of Supreme Decree 24440, adopted on December 13, 1996, establishes the regulations governing import licensing procedures.

Import Bans

Bolivian law authorizes prohibitions on the import of goods on the basis that the goods may affect human and animal life or health, or are harmful to the protection of plants, morality, the environment, the security of the state, or the nation's financial system. In 2018, import 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 more than one year old, motor vehicles more than three years old for the transport of more than ten persons, and special-purpose motor vehicles more than five years old.

Customs Barriers and Trade Facilitation

Bolivia ratified the WTO Trade Facilitation Agreement (TFA) in January 2018. Bolivia is overdue in submitting three transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) the use of customs brokers (Article 10.6.2); and (3) customs contact points for the exchange of information (Article 12.2.2), which were due to the WTO on February 17, 2017, according to Bolivia's self-designated implementation schedule.

Bolivia notified its customs valuation legislation in September 2002, but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

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, and with 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.

GOVERNMENT PROCUREMENT

In 2004, Bolivia enacted the Buy Bolivian (Compro Boliviano) program through Supreme Decree 27328. This program supports domestic production by giving preference margins to domestic producers or suppliers in government procurement. Under procurement rules that were modified in 2007 and 2009, the government must give priority to small and micro-producers and to "campesino" associations in

procurements under \$100,000. In addition, the government requires fewer guarantees and imposes fewer requirements on Bolivian suppliers that qualify as small or micro-producers or as campesino associations.

Bolivian companies also are given priority in government procurement valued between \$142,000 and \$5.7 million. Importers of foreign products can participate in these procurements only where locally manufactured products and local service providers are unavailable or where the Bolivian government does not initially select a domestic supplier. In such cases, or if a procurement exceeds \$5.7 million, the government can call for an international tender. There is a requirement that foreign companies submitting a tender for government consultancy contracts do so in association with a Bolivian company, but the Bolivian government has been known to make exceptions in strategic sectors, as defined by the government. For national and international tenders there are preference margins from 10 percent to 25 percent for Bolivian inputs.

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

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

INTELLECTUAL PROPERTY PROTECTION

Bolivia was on the Watch List in the 2019 Special 301 report. The report noted that significant challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, significant concerns remain about trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. As stated in years past, the Special 301 report again encouraged Bolivia to improve its weak protection of IP, a position that the interim government has acknowledged and expressed interest in addressing.

INVESTMENT BARRIERS

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

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

The former 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 unfair subsidized competition leading to a state-driven economic system. The interim government has stated its intention to rebalance what it sees as an overreach of public companies in the economy.

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

With respect to hydrocarbon resources, Article 359 of the 2009 constitution stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade-related products through the state-owned 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 \$12.2 billion in 2019, a 44.6 percent increase (\$3.8 billion) over 2018. U.S. goods exports to Brazil were \$43.1 billion, up 8.9 percent (\$3.5 billion) from the previous year. Corresponding U.S. imports from Brazil were \$30.9 billion, down 0.8 percent. Brazil was the United States' 9th largest goods export market in 2019.

U.S. exports of services to Brazil were an estimated \$26.3 billion in 2019 and U.S. imports were \$6.2 billion. Sales of services in Brazil by majority U.S.-owned affiliates were \$40.2 billion in 2017 (latest data available), while sales of services in the United States by majority Brazil-owned firms were \$2.7 billion.

U.S. foreign direct investment (FDI) in Brazil (stock) was \$70.9 billion in 2018, a 3.8 percent increase from 2017. U.S. direct investment in Brazil is led by manufacturing, finance and insurance, and mining.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Brazil's average Most Favored Nation (MFN) applied tariff rate was 13.4 percent in 2018 (latest data available). Brazil's average MFN applied tariff rate was 10.1 percent for agricultural products and 13.9 percent for non-agricultural products in 2018 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 31.4 percent. Brazil's maximum bound tariff rate for non-agricultural products is 35 percent, while its maximum bound tariff rate for most agricultural products is 55 percent. Given the large disparities between bound and applied rates, U.S. exporters face significant uncertainty in the Brazilian market because the government frequently increases and decreases tariffs, within the flexibilities of the Southern Common Market (MERCOSUR), to protect domestic industries from import competition and to manage prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

Brazil is a founding member of the MERCOSUR, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent (April 2019 data).

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

Under a July 16, 2015 MERCOSUR Common Market Council (CMC) decision, each MERCOSUR member is permitted to maintain a limited number of exceptions to the CET for an established period. Brazil is permitted to maintain a list of 100 exceptions to the CET until December 31, 2021. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the [official website](#) of MERCOSUR. Using these exceptions, Brazil maintains different tariffs than its MERCOSUR partners on certain goods, including wind turbines, ethanol, certain chemicals, and pharmaceuticals.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. The MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and a December 2010 plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but as of December 2019, only Argentina has done so. On September 11, 2018, the Brazilian congress passed a legislative decree, which requires promulgation by Brazil's executive branch, to complete the process for ratification of the CCC.

Wheat Tariff Rate Quota

Brazil's WTO schedule provides for a 750,000 metric ton (MT) duty-free MFN tariff-rate quota (TRQ) for wheat imports. Brazil did not implement this TRQ commitment for more than 20 years and applied the MERCOSUR CET of 10 percent on imported wheat from non-MERCOSUR countries, including the United States. As an outcome of the meeting between President Trump and President Bolsonaro on March 19, 2019, Brazil announced it would implement the TRQ. On November 5, 2019, the Brazilian government announced it will begin implementing the TRQ. Under the proposal of the Ministry of Agriculture, Livestock and Supply (MAPA), as approved by the Executive Management Committee of the Foreign Chamber of Commerce, duty-free treatment under the quota is for qualifying importations from countries that do not already have a trade agreement that provides duty-free treatment for wheat. The quota represents six percent of Brazilian consumption in 2018.

Ethanol Tariff Rate Quota

In September 2017, Brazil implemented an annual 24-month TRQ on ethanol imports, whereby imports above 600 million liters were subject to a 20 percent tariff (in-quota imports continue to enter duty free). While a 20 percent above-quota tariff is below Brazil's WTO bound tariff rate of 35 percent, any quantitative limit restricts the robust bilateral trade of ethanol between the world's largest ethanol consumers and producers, which existed before the quota was imposed. On August 31, 2019, when the two-year TRQ was set to expire, the Ministry of Economy established a new, 12-month TRQ through Ordinance 547. The new TRQ allows, with seasonal restrictions, duty-free entry of 750 million liters of ethanol. Imports of greater than this volume are subject to a 20 percent tariff. The United States continues to press Brazil to return to the conditions for the trade of ethanol that existed prior to implementation of the TRQ in September 2017.

Taxes

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

On November 8, 2018, a decree was issued for a new incentive program, known as Rota 2030, for the automotive sector. The law for the program was published on December 10, 2018, and establishes regulations granting manufacturers tax incentives if they improve energy efficiency and automobile safety. Automobile manufacturers in Brazil may also receive tax reductions if they invest in research and innovation projects in Brazil. Brazil will grant up to R\$417 million (approximately \$116 million) in tax credits per year to the automobile industry in exchange for R\$5 billion (approximately \$1.39 billion) in research and development investment. The program does not apply to automobile importers. The benefits will be available under the law for a period of five years, but there are plans for the program to remain in

place for 15 years. Brazil created Rota 2030 as a replacement for Inovarauto, a program a WTO dispute settlement panel found in 2017 to be inconsistent with Brazil's WTO obligations.

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

Nontariff Barriers

Import Bans

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

Import Licensing

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

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as agricultural commodities and beverages (MAPA), pharmaceuticals (National Sanitary Regulatory Agency – ANVISA), and arms and munitions (Ministry of National Defense). Although a list of products subject to non-automatic import licensing procedures is available on the SISCOMEX system, specific information related to non-automatic import licensing requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures creates additional burdens for U.S. exporters. Brazil's National Institute of Metrology, Quality, and Technology (INMETRO) is undertaking steps to address current bottlenecks, but sustainable reforms in line with international best practices will be necessary to improve processing and fully automate data exchange.

U.S. footwear and apparel companies have expressed concern about the extension of non-automatic import licensing 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 these products to Brazil.

Customs Barriers and Trade Facilitation

Brazil approved the WTO Trade Facilitation Agreement on April 3, 2018, through Presidential Decree 9326. Brazil's notifications to the WTO indicated that it would complete implementation by the end of 2019. However, additional customs modernization in Brazil would significantly improve the movement of goods. U.S. companies continue to complain of burdensome and inconsistent documentation requirements for the import of certain types of goods, such as heavy equipment, that apply even if imports are on a temporary basis and will be used in other countries. Brazil has made strides in improving its trade facilitation environment by implementing ATA Carnet, to facilitate temporary admission of goods, and working toward a Mutual Recognition Agreement with the United States for its Authorized Economic Operator Program.

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Telecommunications

Pursuant to Resolution 323 of November 2002, the Brazilian National Telecommunications Agency (ANATEL) requires domestic testing of telecommunication products and equipment by designated testing facilities in Brazil. On October 23, 2019, ANATEL replaced Resolution 323/2002, as well as Resolution 242/2000, with Resolution 715, which will go into effect April 20, 2020. Resolution 715 eliminates approval fees, allows ANATEL to more easily update technical procedures, including conformity assessment requirements, and seeks to create a post-market surveillance program. However, it requires subsequent technical regulations to be developed and implemented before any substantive changes can be made to existing conformity assessment requirements. ANATEL has indicated it will propose technical regulations over the next six months based on a risk assessment of products to be homologated. ANATEL has also stated that the proposed regulations will be available for public comment, and the United States has requested Brazil notify these proposals to the WTO Committee on Technical Barriers to Trade (TBT Committee).

Conformity Assessment Procedures for Toys

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

On October 25, 2018, INMETRO published draft Complementary Ordinance 503, which, if implemented, would adjust and clarify several of the technical quality regulations and conformity assessment

requirements in Ordinance 563. However, Ordinance 503 failed to address several of U.S. industry's concerns with Ordinance 563, particularly those related to the complexity of the certification system, the lack of alignment with international standards in several areas, including age-grading, and a requirement to submit confidential business information. On December 26, 2018, INMETRO published Ordinance 598, which indefinitely delayed the implementation of Ordinance 563.

On August 28, 2019, INMETRO issued Ordinance 404, which proposes updates to its product registration approach for all products, including toys. If implemented, it would allow INMETRO to issue the registration number upon receipt of simplified documentation from the manufacturer. The manufacturer would be able to market the produce upon receiving the registration number, while INMETRO conducts its review of the documentation and the product. If the product is not in compliance, the manufacturer would be fined and might have the registration suspended or cancelled.

Conformity Assessment Procedures for Medical Devices

Under Ordinance 54/2016, INMETRO established a two-year validity period for product test reports (four years in the case of large equipment) and a five-year validity period for certifications, resulting in frequent product retesting and recertification. The ordinance also requires the application of a compliance identification mark prior to importation into Brazil. On May 27, 2019, Brazil issued Ordinance 259, proposing changes to Ordinance 54/2016, including increasing to five years the validity period for test reports. Brazil has not yet set the implementation date for these changes. The United States expressed concerns at the November 2019 WTO Committee on Technical Barriers to Trade (WTO TBT Committee) meeting concerning the validity periods for testing and certification of medical devices, and where and when compliance identification seals can be attached, and requested that the final measure be notified to the WTO TBT Committee.

Other Technical Barriers to Trade

ANVISA's process for conducting conformity assessments for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products typically takes from three months to more than one year for new versions of previously registered products and more than six months for new products, creating challenges for these imported goods in the Brazilian market.

Sanitary and Phytosanitary Barriers

Beef

U.S. firms have reported problems with access to Brazil for imports of U.S. beef, in particular changes to the certificate requirements agreed to in 2016. The United States continues to press Brazil to honor its previous commitments, and to notify any new regulatory requirements to the WTO Committee on Sanitary and Phytosanitary Measures.

Pork

U.S. fresh, frozen, and further processed pork products are ineligible for export to Brazil. In the Joint Statement following the meeting between President Trump and President Bolsonaro on March 19, 2019, the leaders announced agreement on science-based conditions to allow for the exportation of U.S. pork to Brazil. Discussions between the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and MAPA are progressing, but have yet to establish conditions for U.S. access to the Brazilian market.

SUBSIDIES

The Greater Brazil Plan (Plano Brasil Maior) industrial policy, established by Law 12546 on December 14, 2011, offers a variety of tax, tariff, and financing incentives to encourage local firms to produce for export. For example, Brazil allows tax-free purchases of capital goods and inputs to domestic companies that export over 50 percent of their output. Similarly, the “Reintegra” program, launched in December 2011 as part of Greater Brazil Plan, exempted exports of goods covered by 8,630 tariff lines from certain taxes, and allowed Brazilian exporters to receive up to three percent of their gross receipts from exports in tax refunds. The Reintegra program expired at the end of 2013, but was reintroduced in July 2014 under Law 13043. The program was amended by Decree 8304 in September 2014 to add sugar, ethanol, and cellulose, among others, to the list of eligible products. The Reintegra program was amended again by Decree 8415 in February 2015 and Decree 8543 in October 2015, establishing that throughout most of 2015, exporters received 1 percent of gross receipts from exports in tax refunds, dropping to 0.1 percent for 2016, and increasing to 2 percent for 2017. The program was amended once again on August 28, 2017 by Decree 9148. In May 2018, Decree 9393 established a permanent rate of 0.1 percent beginning June 1, 2018.

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

Brazil’s Special Regime for the Information Technology Exportation Platform (REPES) suspends Social Integration Program (PIS) and Contribution to Social Security Financing 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 suspends these same taxes on new machines, instruments, and equipment imported by companies that commit for a period of at least two years to export goods and services that account for at least 50 percent of the company’s overall gross income for the previous calendar year.

Brazil provides tax reductions and exemptions on many domestically produced ICT and digital goods that qualify for status under the Basic Production Process (Processo Produtivo Básico, or PPB) through the Law on Computing Technology (Lei de Informática). The PPB is product-specific and stipulates which stages of the manufacturing process must be carried out in Brazil in order for a product 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. Under this program, fertilizer producers receive tax benefits, including an exemption from the IPI on imported inputs, provided they comply with minimum local content requirements (LCR) and can demonstrate investment in local research and development projects.

Brazil also provides a broad range of assistance to its agricultural sector in the form of low interest financing, price support programs, tax exemptions, and tax credits. Brazil establishes minimum guaranteed prices for specific commodities through different programs to ensure that the returns to producers do not fall below the guaranteed level. These programs include the Federal Government Acquisition (AGF) program, the Acquisition from Public Option Contracts (POC) program, the Premium for Product Outflow (PEP) program, and the Premium Equalizer Payment to the Producer (PEPRO) program. Under the AGF and POC programs, the Brazilian government purchases commodities to maintain prices at the level of the

minimum guaranteed price. Under the PEP and PEPRO programs, producers or processors receive a government payment in return for purchasing commodities that are either shipped to specified regions in Brazil or exported. The primary difference between these two programs is that the PEP payment goes to the purchaser of the commodity while PEPRO facilitates payments through an auctioning system to producers or cooperatives, but the administration of the programs is the same. The amount of the PEP/PEPRO payment is based on the difference between the minimum price set by the government and the prevailing market price. Each PEP/PEPRO auction notice specifies the tendered commodity and the approved destination for that product, including export destinations.

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

GOVERNMENT PROCUREMENT

Brazil is not a Party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since October 2017. By statute, a Brazilian state enterprise may subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms. U.S. companies without a substantial in-country presence regularly face significant obstacles to winning government contracts and are, comparatively, more successful in subcontracting with larger Brazilian firms instead. The current administration has announced plans to amend the law to allow more foreign firms to participate in the government procurement process, especially for infrastructure projects.

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

In 2003, the Brazilian National Oil and Gas Regulatory Agency (ANP) created minimum LCRs for all oil companies operating in Brazil's upstream exploration and production phases, including state-controlled Petrobras. The LCRs vary by hydrocarbon resource block (the geographic area that is awarded by the Brazilian government to companies for oil and gas exploration), and within that block the LCRs differ for equipment, workforce, and services. Beginning with offshore bid rounds in 2003, LCRs were as low as 30 percent. ANP requirements increased through 2016, with LCRs between 37 percent and 60 percent for the oil blocks auctioned between 2003 and 2016. 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 decreased to 50 percent from 70 percent and 77 percent, respectively.

INTELLECTUAL PROPERTY PROTECTION

Brazil remained on the Special 301 Watch List in 2019. Brazil is an increasingly important market for IP-intensive industries; however, administrative and enforcement challenges continue, including high levels of counterfeiting and piracy online and in physical markets. Increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay, and stronger deterrent penalties, are critical to make sustained progress on these IP concerns. The National Council on Combating Piracy and Intellectual Property Crimes has renewed activity and may again be an effective entity for carrying out public awareness and enforcement campaigns.

Positive developments at the National Institute of Industrial Property (INPI) include a reduction in application backlogs for patents, trademarks, and industrial designs, an upgrade of the agency's IT systems, and the digitization of patent applications. The decrease in examination times for trademark application put Brazil in line with Madrid Protocol standards for its accession to the agreement in 2019. However, patent delays remain a concern, and average patent pendency is 10 years. To resolve concerns about duplicative reviews by ANVISA of pharmaceutical patent applications presented before INPI, an April 2017 agreement between INPI and ANVISA redefined ANVISA's role in order to expedite the examination of such applications. The United States will continue to monitor implementation of this agreement.

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

SERVICES BARRIERS

Audiovisual Services

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

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 Contribution to the Development of a National Film Industry (CONDECINE), 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.

Brazil's Pay TV law bans cross-ownership between distributors and content producers in Brazil's paid-television sector. The law is being tested by a merger between two foreign entities operating in Brazil. The merged entity, based in the United States but owning an acquired Brazilian broadcaster, asserts that the law's cross-ownership restrictions apply only to producers and programmers based in Brazil and none of its paid-television production or programming companies are headquartered in Brazil. Brazil's antitrust regulator, the Administrative Council for Economic Defense (CADE), approved the merger in 2017 under Brazil's antitrust laws. Concurrently, Brazil's congress is evaluating proposals to update the Pay TV law. The potential update, PL 3832, was introduced in July 2019 and would clarify the law to allow the merged entity to operate.

Express Delivery

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

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

Financial Services

Brazil maintains reciprocity requirements for foreign banks and insurers to establish in Brazil. Foreign banks may establish subsidiaries, but Brazilian residents must be directly responsible for the administration of the financial institution. Since 1995, entry into the banking sector through branching has not been permitted, but some existing banks were grandfathered. Branches of foreign banks already established in Brazil must meet the same capital requirements as subsidiaries and are subject to other burdensome requirements. On September 26, 2019, Decree 10.029 was issued, granting the Brazilian Central Bank

authority to approve entry of foreign financial institutions into Brazil, removing the requirement for the President to approve these decisions.

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

Telecommunications Services

On October 3, 2019, President Bolsonaro signed PLC 79, a major update to Brazil's telecommunications law. The law transitions the regulatory regime for providers of fixed services from concessions to a less restrictive authorization model. The law also allows providers of mobile services to engage in transactions to exchange frequencies with each other and providers of satellite services to apply directly for the use of frequencies, as opposed to through auctions. Service providers will be able to purchase government assets used under their concession and maintain ownership after the contract period expires. Determining the value of government assets will likely require a lengthy process among Brazil's telecommunications regulator ANATEL, the Federal Accounts Court, and the Office of the Solicitor General (AGU).

Local Content Requirements

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. In August 2017, a WTO dispute settlement panel found Brazil's Informatics program, which conferred tax benefits and imposed LCRs favoring Brazilian goods, to be inconsistent with Brazil's WTO obligations, and this was confirmed by the Appellate Body. On December 26, 2019, President Bolsonaro signed a new law with changes to the program, which Brazil considers address the WTO findings.

Satellites

Brazil permits Brazilian-owned entities to acquire the exclusive right to operate a satellite and its associated frequencies from specific positions. However, foreign-licensed satellite operators may obtain only a non-exclusive right (a landing right) to provide service in Brazilian territory. ANATEL grants these landing rights for a fixed term of no longer than 15 years, after which the operator must reacquire the landing rights in order to continue providing services. Foreign operators are also required to pay annual landing fees, which are determined by the reserve amounts at auction set by ANATEL and have increased 17-fold between 2006 and 2015 (latest data available). Landing fees for foreign companies in Brazil are unpredictable and higher than for Brazilian firms.

Roaming

In 2012, ANATEL ruled that FISTEL, a local regulatory tax applied to active subscriber identity module cards (SIMs) within Brazil, may only be applied to domestic carriers utilizing domestic SIMs with corresponding local numbering. As foreign-based carriers using foreign SIMs are not subject to FISTEL, ANATEL concluded that these value-added services may only be provided by locally licensed carriers

using local SIMs. This ANATEL interpretation restricts permanent roaming options for international machine-to-machine (M2M) and Internet of things (IoT) providers, thus requiring development of devices solely for the Brazilian market, and requiring service infrastructure in Brazil. In November 2018, ANATEL reaffirmed in a public consultation that permanent roaming arrangements are illegal 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. The United States encourages Brazil to adopt changes to its law and regulation such that foreign providers of M2M and IoT services may participate in the market without the current restrictions on the use of foreign numbering resources.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

On August 6, 2018, Brazil adopted the Lei Geral de Proteção de Dados Pessoais (LGPD), a measure on the protection of personal data. The law generally applies to the processing of the personal data of data subjects in Brazil by people or entities, regardless of the type of means, the country where the data is located, or the headquarters of the entity. Later amendments and presidential actions postponed the application of the law's data protection provisions to August 2020, and established a Data Protection Authority (DPA) to administer the law's provisions, but without full independence for the DPA from the executive branch of the Government of Brazil. The United States is monitoring implementation of the law, including assurances that the DPA will operate independently and enforce the law in a non-trade restrictive manner.

INVESTMENT BARRIERS

Foreign Ownership of Agricultural Land

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

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was \$244 million in 2019, a 45.1 percent increase (\$76 million) over 2018. U.S. goods exports to Brunei were \$285 million, up 7.2 percent (\$19 million) from the previous year. Corresponding U.S. imports from Brunei were \$41 million, down 57.7 percent. Brunei was the United States' 122nd largest goods export market in 2019.

U.S. exports of services to Brunei were an estimated \$56 million in 2018 (latest data available) and U.S. imports were \$12 million. Sales of services in Brunei by majority U.S.-owned affiliates were \$120 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Brunei (stock) was \$15 million in 2018, a 21.1 percent decrease from 2017.

TRADE AGREEMENTS

Brunei is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Brunei, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. Brunei is also participating in the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which it has signed but not yet ratified.

IMPORT POLICIES

Tariffs

Brunei's average Most Favored Nation (MFN) applied tariff rate was 0.2 percent in 2018 (latest data available). Brunei's average MFN applied tariff rate was zero percent for agricultural products and 0.3 percent for non-agricultural products in 2018 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 25.5 percent. Brunei's highest WTO bound tariff rate is for tobacco and is over 1,000 percent; the highest WTO bound tariff rate for (non-tobacco) agricultural products is 50 percent and for industrial products is 40 percent.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Brunei imposes restrictions or prohibitions on the import of certain goods for religious reasons, including tobacco, alcoholic beverages, and alcohol products (*e.g.*, food products, such as chocolate, with alcohol as an ingredient).

Brunei ratified the WTO Trade Facilitation Agreement (TFA) on December 15, 2015. Brunei is overdue in submitting three transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) the use of customs brokers (Article 10.6.2); and (3) customs contact points for the exchange of information (12.2.2). These notifications were due to the WTO on February 22, 2017 according to Brunei's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE

Halal Standards

Most food sold in Brunei must be certified as halal. However, there is a small market for non-halal foods, which must be sold in designated rooms in grocery stores separated at all times from other products or at restaurants that are specified as non-halal. Regulations enacted in May 2017 require all businesses that produce, supply, and serve food and beverages to obtain a halal certificate, renewed annually. The Ministry of Religious Affairs administers Brunei's halal standards, which are among the most stringent in the world. Brunei has its own halal food certification regime, one entirely distinct from other halal certification organizations, which requires that Bruneian government inspectors travel to production facilities in the home country of the food exporter, at the exporter's expense, to inspect the food production process. This requirement constrains the ability of food product exporters to enter the Brunei market.

The Codex Alimentarius Commission allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. However, under Brunei's Halal Meat Act, halal meat (including beef, mutton, lamb, and chicken) can be imported only by a person holding a halal import permit and an export permit from the exporting country. Additionally, the importers and local suppliers of halal meat must be Muslim. The Bruneian government maintains a list of the foreign and local slaughtering centers (abattoirs) that have been inspected and declared fit for supplying meat that can be certified as halal.

GOVERNMENT PROCUREMENT

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

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

Brunei is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Brunei has made improvements in its intellectual property (IP) environment in recent years, including by joining the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. However, more can be done towards proactively enforcing existing IP regulations, including by improving training standards for police and customs officials tasked with IP enforcement.

OTHER BARRIERS

Localization Requirements

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 and local hiring targets based on the difficulty of the project and the value of the contract, with more flexible local content and local hiring requirements for projects requiring highly specialized technologies or with a high contract value.

Land Ownership Restrictions

Brunei's Land Code restricts non-citizens, including foreign businesses and long-term permanent residents, from freehold land ownership. The Land Code also places restrictions on the sale and transfer of land by non-citizens. The government is heavily involved in all land deals and may grant long-term leases over state land to foreign firms for large investments.

Residency Requirement

Under the Companies Act, Bruneian companies can be 100 percent foreign-owned if at least one of two directors of a locally incorporated company is a resident of Brunei. If a 100 percent foreign-owned company has more than two directors, then at least two must be residents of Brunei. The government may grant an exemption from this requirement, although none has been granted to date.

Transparency

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

BURMA

TRADE SUMMARY

The U.S. goods trade deficit with Burma was \$476 million in 2019, a 103.0 percent increase (\$241 million) over 2018. U.S. goods exports to Burma were \$345 million, up 32.1 percent (\$84 million) from the previous year. Corresponding U.S. imports from Burma were \$821 million, up 65.6 percent. Burma was the United States' 118th largest goods export market in 2019.

TRADE AGREEMENTS

Burma is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Burma, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019.

IMPORT POLICIES

Tariffs

Burma's average Most Favored Nation (MFN) applied tariff rate was 6.5 percent in 2019 (latest data available). The average MFN applied tariff rate was 9.5 percent for agricultural products and 6.0 percent for non-agricultural products in 2019. Burma has bound 18.8 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 83.3 percent.

Nontariff Barriers

Import Bans

The Ministry of Commerce maintains a list of prohibited imports; within the Ministry, the Department of Trade oversees amendments to the list. The list is published in trade bulletins and publications but changes with little notice. The current list includes counterfeit money and goods, pornographic articles, narcotic drugs, liquor, playing cards, drones, arms and ammunition, antiques and archeologically valuable items, endangered species, and items featuring images of the Buddha, Burma's pagodas, and the flag of Burma. In 2019, the Ministry of Commerce developed draft regulations to permit the importation of foreign liquor. At present, Burma only permits the sale of foreign liquors in certain hotels and at duty-free stores.

Import Licensing

Burma requires import licenses to trade in a wide range of products. In May 2019, the Ministry of Commerce released Notification 22/2019 amending Burma's Import Negative List, which requires import licenses for 4,613 HS 8-digit tariff items.

Burma manages imports of agricultural products through an import licensing process that is unpredictable, nontransparent, and varies by product. This arrangement appears to protect domestic producers through limiting or blocking market access for certain U.S. agricultural products. It also appears that Burma has imposed such measures on a temporary basis to stabilize the local currency, which had depreciated due to a scarcity of U.S. dollars resulting from a strong demand for certain imported goods, or to protect its domestic market from an influx of imports.

Customs Barriers and Trade Facilitation

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

Agricultural Biotechnology

Burma has not enacted comprehensive biosafety legislation. While there are existing laws that address certain aspects of biosafety issues, there are no comprehensive guidelines or regulations that govern plant or animal genetic engineering. Burmese regulators drafted a National Biosafety Framework (NBF) in 2009, which has not yet been adopted as of the end of 2019 and is currently being updated to account for new biotechnology developments that have occurred in the last decade. The stated goal of Burma's 2009 draft NBF is to effectively manage the importation, development, field testing, and environmental impacts of genetically engineered (GE) organisms and food in a way that protects human health and biodiversity as well as supports biotechnology development. The U.S. Department of Agriculture has provided technical assistance to Burmese regulators to update the draft legislation to address regulatory uncertainty. The importation of GE food is not explicitly prohibited by any current legislation, although some Burmese government officials have stated otherwise.

SANITARY AND PHYTOSANITARY BARRIERS

Burma requires additional testing for each shipment of most imported agricultural products upon arrival, despite laboratory testing of agricultural products during the license approval process. These testing and inspection procedures do not appear to align with international standards for risk-based inspection of imports. The United States will continue to monitor Burma's development of a new comprehensive food law that would replace existing laws and consolidate them into one law and to encourage Burma to move to a risk-based system.

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 kyat (approximately \$6,600).

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

INTELLECTUAL PROPERTY PROTECTION

Burma enacted the Industrial Design Law and the Trademark Law in January 2019, the Patent Law in March 2019, and the Copyright Law in May 2019. As part of the implementation of the new legislation, the government established a central intellectual property (IP) committee chaired by the Vice President, and a new IP office to administer these new laws. The government is currently drafting implementing regulations for these laws and is not accepting applications to protect IP under the new laws until the regulations are complete. The United States will continue to monitor the implementation of these new laws and regulations.

SERVICES BARRIERS

Prior to 2018, Burmese law permitted foreign banks to provide only export financing and related banking services to foreign corporations. In November 2018, the Central Bank issued several directives expanding the type of operations allowed by licensed foreign banks.

In 2011, the Burma state-owned and private banks created the Myanmar Payment Union to provide debit and switching services among banks. Currently, international retail payment service providers are not allowed to process domestic debit transactions in Burma. The U.S. Government continues to closely monitor Burma's development of regulations in the area of electronic payments, with a view towards ensuring that the measures adopted facilitate competition and a level playing field for U.S. electronic payment service suppliers.

INVESTMENT BARRIERS

Burma has a challenging investment climate with limited access to finance, an opaque land titling system, high transportation costs, limited infrastructure, inconsistent energy supplies, and a shortage of skilled workers. Investors report difficulties with the enforcement of contracts, protection of minority investors, and resolution of insolvency.

In 2016, Burma adopted the Myanmar Investment Law, which consolidated the Myanmar Citizens Investment Law and the Foreign Investment Law into a single instrument. In April 2017, Burma issued its Negative Investment List, which identified nine sectors in which investment is prohibited; twelve sectors in which only domestic investment is allowed; twenty-two 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 went into effect in August 2018 and replaced the Companies Law of 1914. The new law changes the definition of a "foreign company" to a company with more than 35 percent ownership by an overseas corporation or foreign person. This is a significant change from the old version of the law under which if one share of a company was held by a foreign company or individual, that company 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).

OTHER BARRIERS

Smuggling

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

Bribery and Corruption

The government has prioritized fighting corruption, but underdeveloped justice and investigative institutions pose significant challenges to making the fight against corruption both systematic and effective. While corruption remains widespread, recent high-profile corruption cases indicate slow but steady

improvements. Situations where corruption has a particular effect on economic development include 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 \$4.8 billion in 2019, a 43.8 percent increase (\$1.5 billion) over 2018. U.S. goods exports to Cambodia were \$513 million, up 15.2 percent (\$68 million) from the previous year. Corresponding U.S. imports from Cambodia were \$5.4 billion, up 40.4 percent. Cambodia was the United States' 101st largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Cambodia (stock) was \$165 million in 2018, a 9.3 percent increase from 2017.

TRADE AGREEMENTS

Cambodia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Cambodia also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership (RCEP) in November 2019. The ASEAN-Hong Kong, China Free Trade Agreement entered into force on June 11, 2019 for five ASEAN member states, but it has not entered into force for Cambodia as of the end of 2019. In November 2019, Cambodia announced that it would begin discussion with China on a possible bilateral free trade agreement.

IMPORT POLICIES

Tariffs

Cambodia's average Most Favored Nation (MFN) applied tariff rate was 11.1 percent in 2017 (latest available). Cambodia's average MFN applied tariff rate was 15.1 percent for agricultural products and 10.5 percent for non-agricultural products in 2017. Cambodia has bound 100 percent of its tariff lines in the World Trade Organization (WTO) with a simple average WTO bound tariff rate of 19.5 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, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, video games, and gambling equipment.

Nontariff Barriers

Customs Barriers and Trade Facilitation

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

TECHNICAL BARRIERS TO TRADE

In order to improve automotive safety and implement the ASEAN mutual recognition agreement on automobile standards, the government of Cambodia passed a regulation (Prakas No. 150) recognizing United Nations Economic Commission for Europe (UNECE) technical standards for automobiles and

automotive products. The regulation would have prevented new vehicles and automotive parts compliant with U.S. standards from entering Cambodia. However, in October 2019, the government of Cambodia passed an additional regulation recognizing U.S. automotive safety and environmental standards for U.S. imports into Cambodia as of January 1, 2020. The United States continues to engage with Cambodia to ensure that there are no impediments to U.S. imports while this new regulation is being implemented.

GOVERNMENT PROCUREMENT

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

Irregularities in the government procurement process are common despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at a number of ministries, the Cambodian government has taken little action to investigate irregularities. In February 2018, the government issued a new regulation on procedures to resolve complaints about irregularities in government procurement. The regulation covers all procurement conflicts except those already being addressed through arbitration, those involving military secrets, and concession projects that are regulated separately. As of December 2019, industry has not observed any noticeable changes to government procurement processes as a result of this new regulation.

Cambodia is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The U.S. Government has some concerns regarding intellectual property (IP) protection and enforcement in Cambodia. Despite efforts to raise IP awareness, the sale of counterfeit and pirated goods remains prevalent in Cambodian markets. Central Market in Phnom Penh continues to be included in the Out-of-Cycle Review of Notorious Markets. The rates of signal and cable piracy also remain high, and online sites purveying pirated music, films, electronic books, software, and television shows remain popular. In addition, sales of legitimate films have been negatively affected due to the popularity of illegal cinemas that show pirated material.

Various Cambodian authorities work on IP-related issues, including the Ministry of the Interior's Economic Police unit, the General Department of Customs and Excise, the Cambodia Import-Export Inspection and Fraud Repression Directorate General, the National Committee for Intellectual Property Rights, the Institute of Standards of Cambodia, and the Ministry of Commerce. The division of responsibility among these disparate institutions is not clearly defined. In an effort to combat counterfeiting, the Cambodia Counterfeit Committee (CCCC), which is under the Ministry of the Interior, serves as an umbrella agency for 14 organizations. While the CCCC launched a five-year strategic plan in 2016 with a focus on targeting counterfeit products that cause a high risk to health and social safety, it has not yet focused on other

counterfeit products. Owners of trademarks registered in Cambodia and their distributors can apply to the Ministry of Commerce's Department of Intellectual Property Rights to have their commercial relationship recognized as an exclusive dealership. However, it is not yet clear what recourse companies with registered exclusive dealership status will have when reporting infringement of their trademarks, or what processes they will have to follow in order to initiate enforcement actions.

Draft legislation that would address the 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 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. Also, the Ministry of Industry and Handicraft's 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.

The United States continues to meet with Cambodia under our bilateral Trade and Investment Framework Agreement (TIFA) and in other dialogues to urge Cambodia to take steps to improve IP protection and enforcement.

INVESTMENT BARRIERS

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

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

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

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

SERVICES BARRIERS

Financial Services

In October 2017, the National Bank of Cambodia 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 machine of any participating bank or microfinance deposit-taking institutions (MDIs) for a fee. As of January 2018, banking regulations mandate that all banks and MDIs use the CSS for transactions that include balance inquiries, cash withdrawals, and inter-bank fund transfers, and at the merchant point-of-sale consumers have a choice of whether to use the CSS to process debit transactions. The government has indicated it hopes to expand the availability of CSS to process credit transactions in the future.

OTHER BARRIERS

Cambodia is a difficult place to conduct business. Not unlike many emerging economies, high logistics and energy costs, corruption, a lack of an independent judiciary, and poor physical infrastructure make doing business in Cambodia challenging.

Bribery and Corruption

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

Cambodia began publishing official fees for public services at the end of 2012 in an effort to combat "facilitation payments," but this exercise had yet to be completed as of the end of 2019. After national elections in July 2013, certain agencies, such as the Ministry of Commerce and the General Department of Taxation, started providing online information and services in an effort to reduce paperwork and unofficial fees. In addition, anti-corruption information has been incorporated into the national high school curriculum, and civil servants' salaries are disbursed through commercial banks. Businesses have noted that signing an anti-corruption memorandum of understanding with the ACU has helped them avoid paying "facilitation payments."

Judicial and Legal Framework

Cambodia's legal framework is incomplete, its laws are unevenly enforced, and the judiciary lacks independence. 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, as of the end of 2019.

Smuggling

The illegal importation of products such as cosmetics, textiles, wood, sugar, vehicles, fuel, soft drinks, livestock, crops, and cigarettes remains widespread. The Cambodian government has worked to address

this issue with moderate success in certain areas like medicine, but limited success in others such as cosmetics and soft drinks. It has issued numerous orders to stop smuggling, has created various anti-smuggling units within government agencies including the General Department of Customs and Excise, and has established a mechanism within this department to accept and act upon complaints from the private sector and foreign governments. The CCCC allows interested parties to file complaints with actionable information regarding smuggled goods.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was \$27.4 billion in 2019, a 41.9 percent increase (\$8.0 billion) over 2018. U.S. goods exports to Canada were \$292.4 billion, down 2.4 percent (\$7.1 billion) from the previous year. Corresponding U.S. imports from Canada were \$319.7 billion, up 0.3 percent. Canada was the United States' largest goods export market in 2019.

U.S. exports of services to Canada were an estimated \$64.7 billion in 2019 and U.S. imports were \$37.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$122.1 billion in 2017 (latest data available), while sales of services in the United States by majority Canada-owned firms were \$126.2 billion.

U.S. foreign direct investment (FDI) in Canada (stock) was \$401.9 billion in 2018, a 2.7 percent increase from 2017. U.S. direct investment in Canada is led by manufacturing, nonbank holding companies, and finance and 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 any scheduled elimination of duties and quantitative restrictions, completed by January 1, 2008. Canada still maintains tariffs on dairy, poultry, and egg products while the United States still maintains tariffs on dairy, sugar, and peanut products from Canada. After signing the NAFTA, the Parties concluded supplemental, and largely unenforceable, side agreements on labor and the environment.

United States–Mexico–Canada Agreement

On January 29, 2020, President Trump signed legislation implementing the United States–Mexico–Canada Agreement (USMCA). After over a year of additional consultations with Congress, on December 10, 2019, the United States, Mexico, and Canada signed a protocol of amendment to the USMCA that further strengthened the enforcement of its labor and environment commitments.

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

as subsidies and currency manipulation—that have the potential to disadvantage U.S. workers and businesses.

As detailed in this report, despite the NAFTA, a number of outstanding trade-related irritants with Canada continue to exist. The USMCA contains a number of provisions that—once in force—are designed to address many of these issues. For example, the USMCA includes obligations to strengthen enforcement against counterfeiting and piracy, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment. The USMCA also disciplines data localization measures for services providers and financial services providers. Finally, under the Agreement, Canada agreed to eliminate milk classes 6 and 7, discriminatory grading of U.S. grain, and British Columbia’s discriminatory treatment of U.S. wine in grocery stores.

IMPORT POLICIES

Nontariff Barriers

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 that 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 USMCA expands market access opportunities for dairy products, as Canada will open new TRQs exclusively for U.S. products. For example, by year six of the USMCA, quota volumes will reach 50,000 metric tons (MT) for fluid milk, 10,500 MT for cream, 4,500 MT for butter and cream powder, 12,500 MT for cheese, and 7,500 MT for skim milk powder. Under the USMCA, Canada will eliminate tariffs on whey in 10 years and margarine in 5 years. Canada will open new TRQs for U.S. chicken (quota volume will reach 57,000 MT by year six of the USMCA) and U.S. eggs and egg products (quota volume will reach 10 million dozen eggs equivalent by year six of the USMCA). In addition, Canada will expand access for U.S. turkey.

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

Milk Classes

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

The United States has raised its serious concerns with Class 7 with Canada bilaterally and at the World Trade Organization (WTO) Committee on Agriculture. Under the USMCA, Canada will eliminate Class 7 within six months of entry into force. In addition, Canada will ensure that the price for non-fat solids used to manufacture skim milk powder, milk protein concentrates, and infant formula will be no lower than a level based on the USDA price for nonfat dry milk. Transparency provisions obligate Canada to provide information needed to monitor compliance with these commitments. Canada will apply charges to exports of skim milk powder, milk protein concentrates, and infant formula in excess of thresholds specified in the USMCA.

Restrictions on U.S. Grain Exports

A number of grain sector requirements limit the ability of U.S. grain 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 quality grade 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. grain 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. 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 segregating U.S. and Canadian grain at Canadian elevators. The requirement that the quality grade certificate for grain grown outside Canada state the country of origin also encourages segregating at Canadian elevators.

The USMCA requires Canada to treat U.S. wheat no less favorably than Canadian wheat with respect to assigning a quality grade. Under the USMCA, Canada will not be allowed to require a country of origin statement on a quality grade certificate for U.S. wheat.

Ministerial Exemptions

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

The 2007 Technical Arrangement Concerning Trade in Potatoes between the United States and Canada is designed to provide U.S. potato producers with predictable access to Canadian Ministerial exemptions.

USTR and the U.S. Department of Agriculture will continue to engage with U.S. potato growers on any concerns that Canada's procedures for granting ministerial exemptions are not providing access to Canada's market as agreed.

Customs Barriers and Trade Facilitation

Personal Duty Exemption

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

De Minimis Threshold

The *de minimis* exemption allows certain low-value packages from abroad, typically those shipped to fulfill electronic commerce purchases, to pass duty and tax free if they meet certain conditions, particularly the threshold at which the exemption is allowed. Under the USMCA, Canada agreed to double its *de minimis* level for North American express shipments to C\$40 (approximately \$30). Canada will also provide duty free express shipments up to C\$150 (approximately \$114). Canada's *de minimis* threshold presently remains at C\$20 (approximately \$15), which is one of the lowest among industrialized nations.

Wine, Beer, and Spirits

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

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

British Columbia

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

Governing the Sale of Wine in Grocery Stores and assigned it the dispute number DS520. At its meeting on July 20, 2018, the WTO Dispute Settlement Body established a panel.

In an exchange of letters signed November 30, 2018, Canada committed to ensure that BC modify its measures and implement any changes no later than November 1, 2019. The United States has paused its dispute settlement action at the WTO and is reviewing regulatory changes made by British Columbia in July 2019.

Ontario

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

Quebec

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Cheese Compositional Standards

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

Front-of-Package Labeling on Prepackaged Foods

In November 2016, Health Canada requested public and technical comments on its proposal to implement requirements for front-of-package (FOP) labeling on prepackaged foods deemed high in sodium, sugars, and saturated fat, and on updating requirements for other information on the front of food packages including certain claims and labeling of sweeteners. The approach under consideration uses nutrient thresholds to determine whether a food would be required to carry a FOP symbol. During this initial comment period, the U.S. Government and U.S. industry submitted comments to the government of Canada. Canada then issued proposed regulations on February 10, 2018. The U.S. Government submitted additional comments on the proposed regulations in April 2018. Canada has acknowledged receipt and bilateral discussions continue as of 2019. The United States acknowledged these responses in November 2018 and suggested that Canada adopt a fact-based approach, based on serving size. The United States met bilaterally with Canada at all three WTO Committee on Technical Barriers to Trade (WTO TBT Committee) meetings in 2019 to discuss the status of this proposed measure.

U.S. industry has expressed concerns that an interpretive FOP approach will negatively impact U.S. exports of processed foods and undermine free trade benefits under the NAFTA. The United States permits voluntary FOP labeling that meets the Food and Drug Administration’s regulatory requirements, including requirements governing the use of nutrient content claims to help ensure that interpretive terms (*e.g.*, high,

low) are used consistently for all types of food products and are not misleading. In 2019, U.S. exports of processed foods to Canada were valued at \$12 billion.

Restrictions on U.S. Seeds Exports

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

Corded Window Coverings Regulation

In June 2017, Health Canada published a proposed regulation on corded window coverings, abandoning its existing American National Standards Institute aligned standard. The proposed regulation raises stakeholder concerns, as the Canadian regulation is not based on the relevant international standard. The United States engaged with Canada on the margins of the WTO TBT Committee meeting in November 2018 and March 2019 to request that Canada consider additional engagement with industry to further efforts to harmonize the regulation with international and U.S. standards, and will continue to engage on the matter, as appropriate. Health Canada announced on May 1, 2019 that new corded window coverings regulations will come into force May 1, 2021.

GOVERNMENT PROCUREMENT

On July 23, 2019, the government of Canada released the official Request for Proposal (RFP) for its Future Fighter Capability Project (FFCP). The official RFP included an Economic Impact Assessment (EIA) as part of its evaluation criteria. The EIA noted that any bidding company involved in a "trade remedy action" against a product manufactured in Canada would have its bid subject to the EIA, which may result in a deduction on the final score of the bid. The move was broadly interpreted as a response to Boeing's 2017 trade remedy action against Canada's Bombardier, and a warning to other companies that might pursue trade remedy actions against Canadian firms. The United States is concerned about the potential effects the EIA may have on U.S. companies when they compete in future Canadian defense procurement projects. The U.S. Department of Commerce and the U.S. Department of State continue to engage with the government of Canada on this issue.

Canada is a party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Canada was moved to the Watch List in the Special 301 Report in 2019. As noted in the Special 301 Report, the most significant step forward taken by Canada is its agreement to important intellectual property (IP) provisions in the USMCA that will significantly improve Canada's IP environment once implemented. This includes enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new geographical indications (GIs), and application of full national treatment for copyright. With respect to GIs, the United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each individual IP

right being independently evaluated on its individual merits. Because shortfalls in protection and enforcement of IP constitute a barrier to exports and investment, these issues are a continuing priority in bilateral trade relations with Canada. Issues of concern include poor enforcement with respect to counterfeit or pirated goods at the border and within Canada, weak patent and pricing environments for innovative pharmaceuticals, and deficient copyright protection.

Pharmaceuticals

A number of regulatory changes to Canada's Patented Medicine Prices Review Board were announced on August 9, 2019. The regulations are set to come into force July 1, 2020. The United States believes each country should appropriately recognize the value of patented pharmaceutical products and medical devices and should ensure that its decisions are made transparently, and contribute fairly to research and development for innovative treatments and cures. The United States will monitor carefully the impact of these regulatory changes.

SERVICES BARRIERS

Audiovisual Services

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 6:00 p.m. to 11:00 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.

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).

U.S. broadcasters have also complained about Canadian cable and satellite suppliers picking up the signals of U.S. stations near the border and redistributing them throughout Canada without the U.S. broadcasters' consent. Content owners (including broadcasters who develop their own programming) can apply for

compensation for the use of such content in Canada from a statutorily mandated fund into which Canadian cable and satellite suppliers pay. However, U.S. broadcasters consider this compensation, which was recently reduced, to be insufficient, and have sought the right to negotiate the carriage of their signals on commercially set rates and terms, as can be done in the United States. The United States will continue to explore avenues to address these concerns.

Financial Services

Canada requires financial institutions in Canada to replicate and maintain in Canada any data related to the Canadian operations of the financial institution that is transferred outside of Canada. The USMCA includes a provision that prohibits local data storage requirements, so long as the financial regulators have direct and immediate access to data stored outside its territory. Canada has a transition period of one year after entry-into-force to bring its laws into conformity with the USMCA data provisions.

Telecommunications Services

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

BARRIERS TO DIGITAL TRADE

Data Localization

In 2019, the Office of the Privacy Commissioner (OPC) proposed a revised interpretation of the Personal Information Protection and Electronic Documents Act (PIPEDA) that would require consent for any cross-border transfer of personal data from Canada. OPC withdrew the proposal in light of the government of Canada's announcement that it plans to amend PIPEDA in the near future. USTR will continue to monitor the interpretation and enforcement of PIPEDA, including future changes to the legislation, to ensure that Canada does not place restrictions on the cross-border transfer of data that would create barriers to trade.

Digital Services Tax

The Canadian government continues to explore imposing a tax on revenues from providing digital services to, or aimed at, Canadians. The United States has expressed that it would cause serious concern if Canada adopts a unilateral digital services tax that unfairly targets American companies.

Digital Media

On September 28, 2017, the government launched its Creative Canada initiative, which provides a policy framework to expand Canada's creative industries. Creative Canada's policy framework states that the government "will seek commitments from, and pursue agreements with, global Internet companies that provide services to Canadians" to ensure they contribute to Canadian programming and the development of Canadian talent with investments in production and distribution. Although Canada does allow Internet-enabled video distribution suppliers to offer services in Canada on a cross-border basis, companies seeking

to invest in local production to generate programming for both local and global customers have been subject to highly burdensome requirements.

INVESTMENT BARRIERS

The Investment Canada Act has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada when acquiring a controlling interest in an existing Canadian business or starting a new business. Innovation, Science and Economic Development Canada is the government's reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage Canada. Investors with investments below certain thresholds have the option to delay reporting for up to 30 days after implementation. Generally, investments above those thresholds are assessed based on whether they are of "net benefit" to Canada and must wait for affirmative approval before implementation.

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

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was \$5.4 billion in 2019, a 34.9 percent increase (\$1.4 billion) over 2018. U.S. goods exports to Chile were \$15.8 billion, up 2.6 percent (\$400 million) from the previous year. Corresponding U.S. imports from Chile were \$10.4 billion, down 8.7 percent. Chile was the United States' 20th largest goods export market in 2019.

U.S. exports of services to Chile were an estimated \$5.2 billion in 2018 (latest data available) and U.S. imports were \$1.9 billion. Sales of services in Chile by majority U.S.-owned affiliates were \$12.0 billion in 2017 (latest data available), while sales of services in the United States by majority Chile-owned firms were \$761 million.

U.S. foreign direct investment (FDI) in Chile (stock) was \$26.1 billion in 2018, a 1.0 percent increase from 2017. U.S. direct investment in Chile is led by mining, finance and insurance, and manufacturing.

TRADE AGREEMENTS

United States-Chile Free Trade Agreement

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

The FTA established a Free Trade Commission (FTC), which meets regularly to review the functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

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

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

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

Nontariff Barriers

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

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

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Law Establishing Rules on the Marketing and Labeling of Milk and Other Dairy Products

In November 2019, the government of Chile approved a law establishing revised standards for the manufacturing, naming, and labeling of milk products or products derived from milk. The measure was finalized in advance of the deadline for trading partners to submit comments on Chile's World Trade Organization (WTO) technical barriers to trade (TBT) notification. The United States has concerns with requirements established by this legislation, including (1) restrictions of the circumstances under which products made from reconstituted and recombined milk can be labeled and marketed, which may potentially be inconsistent with Codex Alimentarius Commission standards, and (2) requirements that dairy products be labeled with the name and representative flag of the country of origin of the milk contained therein. The United States raised concerns on this measure bilaterally in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) in November 2019. The United States will continue to monitor and engage the government of Chile on these issues prior to the measure's implementation in August 2020.

Technical Annex: Measurement, Monitoring and Control Systems

In March 2019, the Chilean National Energy Commission notified to the WTO a draft regulation that would establish requirements for the country's electricity system, to include advanced metering infrastructure through the deployment of smart meters by all electric utilities. Specifically, the Technical Annex: Measurement, Monitoring and Control Systems provides specifications that utility companies must follow for smart metering implementation. The regulation would limit acceptance of the U.S.-based American National Standards Institute (ANSI) standard (considered an international standard) for use in low customer concentration geographic areas only, while providing for acceptance of the European Union-based International Electrotechnical Commission standard in all geographic areas across Chile. Despite industry comments in support of including the ANSI standard, the United States raising concerns bilaterally in the March and June 2019 WTO TBT Committee meetings, and very active outreach by the U.S. Embassy in Santiago, the government of Chile finalized the measure without inclusion of the ANSI standards in November 2019. The U.S. Government will continue to monitor the implementation of this measure in 2020 and its impacts on U.S. manufacturers.

Sanitary and Phytosanitary Barriers

Salmonid Products Ban

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

GOVERNMENT PROCUREMENT

Chile is not a Party to the WTO Agreement on Government Procurement; but has been an observer to the WTO Committee on Government Procurement since September 1997. Additionally, the FTA contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Chile remained on the Priority Watch List in the 2019 Special 301 Report. Although there was positive movement by Chile with regard to the implementation of certain intellectual property (IP) obligations under the FTA, the United States remains concerned about the adequacy and effectiveness of the protection and enforcement of IPR under Chile's system. Since November 2018, a new law has been in force providing for protection and enforcement against certain aspects of piracy occurring through satellite signal theft. The law establishes penalties for the importation, commercialization, and distribution of illegal decoding devices used to steal encrypted program-carrying signals.

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

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

OTHER BARRIERS

Export Policies

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

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

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was \$345.6 billion in 2019, a 17.6 percent decrease (\$73.9 billion) over 2018. U.S. goods exports to China were \$106.6 billion, down 11.3 percent (\$13.5 billion) from the previous year. Corresponding U.S. imports from China were \$452.2 billion, down 16.2 percent. China was the United States' 3rd largest goods export market in 2019.

U.S. exports of services to China were an estimated \$56.7 billion in 2019 and U.S. imports were \$18.7 billion. Sales of services in China by majority U.S.-owned affiliates were \$54.9 billion in 2017 (latest data available), while sales of services in the United States by majority China-owned firms were \$18.0 billion.

U.S. foreign direct investment (FDI) in China (stock) was \$116.5 billion in 2018, a 8.3 percent increase from 2017. U.S. direct investment in China is led by manufacturing, wholesale trade, and finance and insurance.

KEY TRADE BARRIERS

The United States continues to pursue vigorous engagement to increase the benefits that U.S. businesses, workers, farmers, ranchers, service providers, and consumers derive from trade and economic ties with China. At present, China's trade policies and practices in several specific areas cause particular concern for the United States and U.S. stakeholders. The key concerns in each of these areas are summarized below. For more detailed information on these concerns, see the [2019 USTR Report to Congress on China's World Trade Organization \(WTO\) Compliance](#), issued on March 6, 2020; [Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974](#), issued on March 22, 2018; and, [Update Concerning China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation](#), issued on November 20, 2018.

INDUSTRIAL POLICIES

Overview

China continues to pursue a wide array of industrial policies 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.

Tariffs

China's average Most Favored Nation (MFN) applied tariff rate was 9.8 percent in 2018 (latest data available). China's average MFN applied tariff rate was 15.6 percent for agricultural products and 8.8 percent for non-agricultural products in 2018. China has bound 100 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 10 percent. Its highest WTO bound tariff rate is 65 percent for certain agricultural goods.

In April 2018, China imposed tariffs ranging from 15 percent to 25 percent on a range of agricultural, steel, and aluminum products imported from the United States in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The President's decision was based on a determination that the quantity and circumstances of U.S. imports of steel and aluminum products – including the circumstances of severe excess capacity and resulting overproduction emanating from China – threaten to impair U.S. national security. In July 2018, the United States launched a dispute settlement proceeding against China in the WTO pertaining to China's retaliatory tariffs. The United States will continue to take all necessary action to protect U.S. interests in the face of this type of retaliation.

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

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

Technology Transfer

At the beginning of 2017, longstanding and serious U.S. concerns regarding technology transfer remained unaddressed, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. At the same time, new concerns continued to emerge. In August 2017, USTR initiated an investigation under Section 301 of the Trade Act of 1974, as amended, focused on policies and practices of the Government of China related to technology transfer, intellectual property, and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese government conduct that would be the subject of its inquiry, including but not limited to: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology 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 cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 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. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO case challenging certain discriminatory technology licensing measures maintained by China as well as the imposition of additional tariffs on Chinese imports.

The Economic and Trade Agreement Between the United States of America and the People's Republic of China (Phase One agreement) signed in January 2020 addresses several of the unfair trade practices of China that were identified in USTR's Section 301 report. For the first time in any trade agreement, China agreed to end its longstanding practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals, or receiving advantages from the Chinese government. China also committed to provide transparency, fairness, and due process in administrative proceedings and to ensure that technology transfer and licensing take place on market terms. Separately, China committed to refrain from directing or

supporting outbound investments aimed at acquiring foreign technology pursuant to its distortive industrial plans.

Indigenous Innovation

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

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

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

Over the years, the underlying thrust of China’s indigenous innovation policies has remained unchanged. Accordingly, USTR has been using mechanisms like its Section 301 investigation and resulting tariffs to seek to address, among other things, China’s use of indigenous innovation policies to force or pressure foreigners to own or develop their intellectual property in China. The Phase One agreement addresses several of China’s unfair trade practices involving technology transfer. Among other things, for the first time in any trade agreement, China agreed to end its longstanding practice of forcing or pressuring foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, securing administrative approvals, or receiving advantages from the Chinese government. Similarly, China agreed not to favor Chinese-owned technology or technology licensed to a Chinese company as a condition for obtaining market access, securing administrative approvals, or receiving advantages from the Chinese government.

Made in China 2025 Industrial Plan

In May 2015, China’s State Council released *Made in China 2025*, a 10-year plan spearheaded by the Ministry of Industry and Information Technology (MIIT) and targeting 10 strategic advanced manufacturing sectors, including advanced information technology, automated machine tools and robotics, aviation and spaceflight equipment, maritime engineering equipment and high-tech vessels, advanced rail transit equipment, 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 technologies, products, and services with Chinese technologies, products, and services in the China market through any means possible so as to enable Chinese companies to dominate international markets.

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

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

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

As discussed above, USTR's Section 301 investigation and resulting tariff and other actions seek to address China's forced technology transfer regime. This regime is one of the instruments through which China intends to meet its *Made in China 2025* targets. As discussed above, the Phase One agreement addresses several aspects of China's forced technology transfer regime.

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 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 18 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.

The United States is working with the EU and Japan to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations. Among other things, the rules under development focus on the unique challenges posed by China's state-owned enterprise subsidization.

Excess Capacity

Because of its state-led approach to the economy, China is the world's leading offender in creating non-economic capacity, as evidenced by the severe and persistent excess capacity situations in several industries. China is also 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 such as steel and aluminum, China's economic planners have contributed to massive excess capacity in China through various government support measures. For steel, the resulting over-production has distorted global markets, harming U.S. manufacturers and workers in both the U.S. market and third country markets, where U.S. exports compete with Chinese exports. While China has publicly acknowledged excess capacity in these industries, among others, it has yet to take meaningful steps to address the root causes of this problem in a sustainable way.

From 2000 to 2016, China accounted for 75 percent of global steelmaking capacity growth, an increase well in excess of the increase in global and Chinese demand over the same period. Currently, China's capacity represents about one-half of global capacity and more than twice the combined steelmaking capacity of the EU, Japan, the United States, and Brazil. Meanwhile, China's steel exports grew particularly sharply in 2014, reaching 92 million metric tons (MT) in 2014, a 50-percent increase over 2013 levels, despite sluggish steel demand abroad. In 2015, Chinese exports continued to be the largest in the world and reached a historic high of 111 million MT, causing increased concerns about the detrimental effects that these exports would have on the already saturated global market for steel. China's steel exports grew further in the first half of 2016, before beginning to decline in the second half of the year, a trend that continued into 2017 and 2018. At the same time, however, China's steel production reached new highs. China produced a record high 928 million MT of crude steel in 2018, and its production is projected to surpass this level in 2019. Any weakening of demand in the China market is likely to result in overproduction that will flood the global market, particularly given Chinese steel manufacturers' historically poor record for reacting to market signals.

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

Excess capacity in China hurts various U.S. industries and workers not only through direct exports from China to the United States, but also through its impact on global prices and supply, which makes it difficult for competitive manufacturers throughout the world to remain viable. Indeed, domestic industries in many of China's trading partners continue to petition their governments to impose trade measures to respond to the trade-distortive effects of China's excess capacity. In addition, the United States has taken action under Section 232 of the Trade Expansion Act of 1962 to increase duties on steel and aluminum products after finding that excessive imports are a threat to U.S. national security.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime, which adversely affects foreign investors in key services sectors, agriculture, certain extractive industries, and certain manufacturing sectors. Many aspects of China's current investment regime continue to cause serious concerns for foreign investors. For example, China's adoption of a *Foreign Investment Law* in 2019 that perpetuates separate regimes for domestic investors and investments and foreign investors and investments invites opportunities for discriminatory treatment. There has been a lack of substantial liberalization of China's investment regime, evidenced by the continued application of prohibitions, foreign equity caps, and joint venture requirements and other restrictions in certain sectors. It remains unclear whether China has replaced its case-by-case administrative approval system for a broad range of investments with a system that is limited to "restricted" sectors. In addition, even for sectors that have been liberalized, the potential for discriminatory licensing requirements or the discriminatory application of licensing processes could make it difficult to achieve meaningful market access. Finally, the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China's *Cybersecurity Law* and related implementing measures, including ones that restrict cross-border data flows and impose data localization requirements, have serious negative implications for foreign investors and investments.

Foreign enterprises also report that Chinese government officials may condition investment approval on a requirement that a foreign enterprise transfer technology, conduct research and development (R&D) 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, or appeared to curtail ad hoc actions by Chinese government officials.

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

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. While China appears to have removed the challenged export restraints, the United States continues to monitor the situation.

In the United States' view, it is deeply concerning that the United States was forced to bring multiple cases to address the same obvious WTO compliance issues. A responsible WTO member would have withdrawn its highly trade-distortive export restraint policies after the first definitive WTO litigation.

Value-added Tax Rebates and Related Policies

As in prior years, in 2019, the Chinese government attempted to manage the export of many primary, intermediate, and downstream products by raising or lowering the 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 Recyclable Materials

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

Standards

China continues to implement large-scale reforms to its standards system. This reform seeks to incorporate a "bottom up" strategy in standards development in addition to the existing "top down" system.

In January 2018, China's revised *Standardization Law* entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China's standardization activities and to the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they

appear to focus on the development of Chinese standards without sufficient consideration being given to existing, internationally developed standards. In addition, they do not explicitly provide that foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process, and they fall short of explicitly endorsing internationally accepted best practices.

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. Foreign companies have reported an inconsistent ability to influence these domestic standards-setting processes, and even in technical committees where participation has been possible for some foreign stakeholders, it has typically been on terms less favorable than those applicable to their domestic competitors. For example, the technical committee for cybersecurity standards (known as TC-260) allows foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to participate in some of the TC-260 working groups. However, foreign companies are not universally allowed to participate as voting members, and they report challenges to participating in key aspects of the standardization process, such as drafting. They also remain prohibited from participating in certain TC-260 working groups, such as the working group on encryption standards.

U.S. stakeholders have also reported that, in some cases, Chinese government officials have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, 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.

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 its large domestic market to promote or compel the adoption of Chinese standards in global markets. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised *Standardization Law*.

Cosmetics

As of December 2019, China was still considering for adoption a draft Cosmetics Supervision and Administration Regulation (CSAR) and draft implementing measures. Among other things, it remained unclear whether, in the final versions, China would accept international test and other data for special and nonspecial use cosmetics safety assessments and for special use cosmetics efficacy claims. China has also not responded to U.S. inquiries expressing concern that U.S. cosmetics imports will not be able to comply with China's conformity assessment procedures, which require a Good Manufacturing Practices (GMP) certification by a national regulatory authority or third party. Without this ability, imported products may still be required to undergo animal testing in China. In addition, China's GMP certification requirement does not align with the practice in China's largest export markets, the United States and the EU, which allow GMP self-certification, based on alignment with the ISO GMP standard 22716. This requirement also appears to be discriminatory: under existing regulations in China, domestically produced cosmetics may forego mandatory animal testing and self-certify their GMP and product safety compliance. Until China addresses these issues, market access for many U.S. companies will be impaired.

Secure and Controllable ICT Policies

In 2019, China continued to issue measures intended to implement the *Cybersecurity Law* adopted in November 2016, and global concerns regarding China's invocation of national security as a basis for these measures increased. As demonstrated in the implementing measures, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign information and communications technology (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.

In addition to the *Cybersecurity Law*, China has referenced its "secure and controllable" requirements in a variety of measures dating back to 2013. Through these measures, China has mandated that Chinese information technology users purchase Chinese products and favor Chinese service suppliers, has imposed local content requirements, has imposed domestic R&D requirements, has considered the location of R&D as a cybersecurity risk factor, and has required the transfer or disclosure of source code or other intellectual property. In 2019, China added political, diplomatic, and other "non-market" developments as potential risk factors to be considered.

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, China has not honored its promises. The numerous draft and final cybersecurity implementation measures issued by China from 2017 through 2019 raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation through written

comments on draft measures, bilateral engagement, and multilateral engagement, including at WTO committee and council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are ongoing.

Encryption

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. 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.

In October 2019, China adopted a *Cryptography Law* that includes restrictive requirements for commercial encryption products that “involve national security, the national economy and people’s lives, and public interest,” which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the new *Cryptography Law* will lead to unnecessary restrictions on foreign ICT products and services. The United States will continue to monitor implementation of the *Cryptography Law* and related measures and will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

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 sixth revised offer in October 2019. This offer showed progress in a number of areas, including thresholds, coverage at the sub-central level of government, 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 AD and CVD investigations and imposing duties – even when necessary legal and factual support for the duties is absent – for the purpose of striking back at trading partners that have exercised their WTO rights against China. To date, the U.S. response has been the filing and prosecution of three WTO disputes. The decisions reached by the WTO in those three disputes confirm that China failed to abide by WTO disciplines when imposing the duties at issue.

INTELLECTUAL PROPERTY RIGHTS

Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign rights holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Currently, China is in the midst of establishing an intellectual property appellate court and revisions to certain laws and regulations. Despite various plans and directives issued by the State Council, inadequacies in China's intellectual property 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 2019 Special 301 report. In addition, in April 2019, USTR announced the results of its 2018 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.

The Phase One agreement addresses numerous longstanding U.S. concerns relating to China's inadequate intellectual property protection and enforcement. Specifically, the agreement requires China to revise its legal and regulatory regimes in a number of ways in the areas of trade secrets, pharmaceutical-related intellectual property, patents, trademarks, and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures and to establish deterrent-level penalties. China must also take a number of steps to strengthen enforcement against pirated and counterfeit goods, including in the online environment, at physical markets, and at the border.

Trade Secrets

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft 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' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

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

At the November 2016 JCCT meeting, China claimed that it was strengthening its trade secrets regime and bolstering 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 2016 and 2017, China circulated proposed revisions to the *Anti-unfair Competition Law* for public comment. China issued the corresponding 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. Although China further amended its *Anti-unfair Competition Law* and its *Administrative Licensing Law* in

April 2019, these amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement.

At present, the United States continues to have significant concerns about intellectual property protection in China. Trade secrets is an area of particular concern.

The Phase One agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft, to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft, to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation, and to prohibit government personnel and third party experts and advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets, and confidential business information submitted to the government.

Bad Faith Trademark Registration

The continuing registration of trademarks in bad faith in China remains a significant concern. At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Although amendments to the *Trademark Law* that entered into force in November 2019 require the disallowance of bad faith trademark applications, it is unclear whether implementation will ensure adequate protection for right holders. 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. The Phase One agreement requires China to address longstanding U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad faith trademark applications.

Pharmaceuticals

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

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. Nevertheless, time-to-market for innovative pharmaceutical products in China remains a significant concern.

Another serious ongoing 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 August 2015, a State Council measure issued in final form without having been made available for public comment created an expedited regulatory approval process for innovative new drugs where the applicant’s manufacturing capacity had been shifted to China. The United States has urged China to reconsider this approach.

In April 2016, China’s Food and Drug Administration (CFDA) issued a draft measure that effectively would require drug manufacturers to commit to price concessions as a pre-condition for securing marketing

approval for new drugs. Given its inconsistency with international regulatory practices, which are based on safety, efficacy, 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 require any specific pricing information as part of the drug registration evaluation and approval process and, in addition, not to link pricing commitments to drug registration evaluation and approval. 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 regularly fulfilled in practice. Accordingly, the United States remains in close contact with U.S. industry and has been examining developments carefully in this area.

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

CFDA also issued several draft notices in 2017 setting out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. In addition, this proposed framework sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, in 2018, CFDA's successor agency, the State Drug Administration (SDA), issued draft *Drug Registration Regulations* and implementing measures on drug trial data that would preclude or condition the duration of regulatory data protection on whether clinical trials and first marketing approval occur in China. Subsequently, in August 2019, China issued a revised *Drug Administration Law*, followed by draft *Drug Registration Regulations* in October 2019. Neither measure contained an effective mechanism for early resolution of potential patent disputes or any form of regulatory data protection.

As part of the Phase One agreement, the two sides agreed that China would establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that is to cover both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product. Going forward, the United States will work closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the agreement also provides for patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term as well as for the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

Online Infringement

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

The United States has urged China to consider ways to create a broader policy environment that helps foster the growth of healthy markets for licensed and legitimate content. The United States also has urged China to revise existing rules that have proven to be counterproductive.

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 December 2016 and November 2017, China published drafts of a new *E-Commerce Law* for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown regime and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new *E-Commerce Law*, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on intellectual property protection and enforcement for its e-commerce market, which is now the largest in the world. However, as finalized, the law instead introduced provisions that weaken the ability of rights holders to protect their rights online and that alleviate the liability of Chinese e-commerce platforms for selling counterfeit and other infringing goods. A draft tort liability chapter in the *Civil Code*, published in January 2019, contained similar problematic provisions that would weaken the existing notice-and-takedown system.

The Phase One agreement requires China to provide effective and expeditious action against infringement in the online environment, including by requiring expeditious takedowns and by ensuring the validity of notices and counter notices. It also requires China to take effective action against e-commerce platforms that fail to take necessary measures against infringement.

Counterfeit Goods

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its *Trademark Law*, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right holders. 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 views 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 the final *Drug Administration Law*, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it is unclear how these requirements will be implemented or enforced.

The Phase One agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit. It further requires China to ensure, through third party audits, that government agencies and state-owned enterprises only use licensed software.

AGRICULTURE

Overview

China remains a difficult and unpredictable market for U.S. agricultural exporters, largely because of inconsistent enforcement of regulations and selective intervention in the market by China's regulatory

authorities. The failure of China's regulators to routinely follow science-based, international standards and guidelines further complicates and impedes agricultural trade.

The Phase One agreement addresses structural barriers to trade and will support a dramatic expansion of U.S. food, agriculture, and seafood product exports, which will increase U.S. farm and fisheries income, generate more rural economic activity, and promote job growth. A multitude of non-tariff barriers to U.S. agriculture and seafood products are addressed, including for meat, poultry, seafood, rice, dairy, infant formula, horticultural products, animal feed and feed additives, pet food, and products of agriculture biotechnology. The agreement also includes enforceable commitments requiring China to purchase and import on average at least \$40 billion of U.S. agricultural and seafood products per year over the next two years, representing an average annual increase of at least \$16 billion over 2017 levels. On top of that, China also agreed that it will strive to purchase and import an additional \$5 billion of U.S. agricultural and seafood products each year.

Agricultural Domestic Support

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

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

In September 2016, the United States launched a WTO case challenging China's government support for the production of wheat, corn, and rice as being in excess of China's commitments. Like other WTO members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn, and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China subsequently agreed to come into compliance with the panel's recommendations on wheat and rice by March 31, 2020.

Tariff-rate Quota Administration

Market access promised through the tariff-rate quota (TRQ) system set up pursuant to China's WTO accession agreement has yet to be fully realized. Due to China's poorly defined criteria for applicants, unclear procedures for distributing TRQ allocations, and failure to announce quota allocation and reallocation results, traders are unsure of available import opportunities and producers worldwide have reduced market access opportunities. As a result, China's TRQs for wheat, corn, and rice do not fill each year. In December 2016, the United States launched a WTO case challenging China's administration of TRQs for wheat, corn, and rice. Consultations took place in February 2017. A WTO panel was established to hear the case at the United States' request in September 2017, and 17 other WTO members joined as

third parties. Hearings before the panel took place in July and October 2018, and the panel issued its decision in April 2019, ruling that China's administration of tariff-rate quotas for wheat, corn, and rice was WTO-inconsistent. The United States and China subsequently agreed on the reasonable period of time for China to come into compliance with WTO rules, which recently was extended to May 29, 2020.

As part of the Phase One agreement, China agreed not only to comply with its WTO obligations for the administration of TRQs for wheat, corn, and rice, but also to make specific improvements to its administration of the wheat, corn, and rice TRQs, including with regard to the allocation methodology and the treatment of non-state trading quota applicants. It also committed to greater transparency.

Agricultural Biotechnology Approvals

The number of products pending Chinese regulatory approval continues to increase, causing uncertainty among traders and resulting in an adverse trade impact, particularly for U.S. exports of corn and alfalfa. In addition, the asynchrony between China's biotechnology product approvals and the product approvals made by other countries has widened considerably in recent years.

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 two product approvals after each meeting, while taking no action on several other products that were subject to NBC review. Following the meeting between Presidents Trump and Xi in Buenos Aires in December 2018, the NBC issued five additional product approvals and 23 renewals. One year later, in December 2019, the NBC issued two additional product approvals and 10 renewals.

Unfortunately, the NBC still has not approved one canola event and two alfalfa events whose applications have been pending for several years. In addition, while the NBC is required to meet at least two times each year, the meetings continue to be held randomly and information about the meetings is not widely shared with the public.

In the Phase One agreement, China committed to implement a transparent, predictable, efficient, and science- and risk-based system for the review of products of agricultural biotechnology. The agreement also calls for China to improve its regulatory authorization process for agricultural biotechnology products, including by completing reviews of products for use as animal feed or further processing by an average of no more than 24 months and by improving the transparency of its review process. China also agreed to work with importers and the U.S. government to address situations involving low-level presence of genetically engineered materials in shipments. In addition, China agreed to establish a regulatory approval process for all food ingredients derived from genetically modified microorganisms (GMMs), rather than continue to restrict market access to GMM-derived enzymes only.

Food Safety Law

China's ongoing implementation of its 2015 *Food Safety Law* has led to the introduction of a myriad of new measures. These measures include exporter facility and product registration requirements for goods such as dairy, infant formula, seafood, grains, animal feed, pet food, and oilseeds. Overall, China's notification of these measures to the WTO TBT Committee and the WTO Sanitary and Phytosanitary Committee (SPS Committee) has been uneven.

Despite facing strong international opposition and agreeing to a two-year implementation delay of an official certification requirement for all food products, China's regulatory authorities issued a draft measure in November 2019 that would require the registration of all foreign food manufacturers. The draft measure could be even more burdensome than the previous requirement, which mandated official certification of all

food products, including low-risk food exports. The United States submitted comprehensive written comments on the draft measure and also urged China to notify the draft measure to the WTO TBT Committee and the WTO SPS Committee. This draft measure and similar prior measures continue to place excessive strain on traders and exporting countries' regulatory authorities, with no apparent added benefit to food safety. They instead seemingly provide China with a tool to control the volume of food imports as decided by China's state planners.

The Phase One agreement addresses many SPS and food safety issues. China also specifically committed that it would not implement food safety regulations that are not science- or risk-based and that it would only apply food safety regulations to the extent necessary to protect human life or health.

Poultry

In January 2015, due to an outbreak of high pathogenicity avian influenza in the United States, China imposed a ban on the import of all U.S. poultry products. Even though the outbreak was resolved in 2017 in accordance with the guidelines of the World Organization for Animal Health (known by its French acronym, OIE), China did not take any action to re-open its market to U.S. poultry products until November 2019. At that time, China reopened its market to U.S. poultry meat, but not to other U.S. poultry products such as shell eggs. Since then, China's General Administration of Customs has completed the updating of a list of hundreds of U.S. establishments eligible to export poultry meat to China.

In the Phase One agreement, China agreed to maintain measures consistent with OIE guidelines for future outbreaks of avian influenza. China also agreed to sign and implement a regionalization protocol within 30 days of entry into force of the agreement, which will help avoid unwarranted nationwide animal disease restrictions in the future.

Beef

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

In the Phase One agreement, China agreed to expand the scope of U.S. beef products allowed to be imported, to eliminate age restrictions on cattle slaughtered for export to China, and to recognize the U.S. beef and beef products' traceability system. China also agreed to establish maximum residue levels (MRLs) for three synthetic hormones legally used for decades in the United States consistent with Codex standards and guidelines. Where Codex standards and guidelines do not yet exist, China agreed to use MRLs established by other countries that have performed science-based risk assessments.

Pork

China maintains an approach to U.S. pork that is inconsistent with international standards, limiting the potential of an important export market given China's growing meat consumption and major shortages of domestic pork due to African swine fever. Specifically, China bans the use of certain veterinary drugs and growth promotants instead of accepting the MRLs set by Codex.

In the past, China randomly enforced a zero tolerance for the detection of salmonella in imported pork. In June 2017, a Chinese national standard that laid out the testing requirements for imported raw meat products was replaced by a new standard that does not include a salmonella test for raw meat products.

As part of the Phase One agreement, China agreed to broaden the list of pork products that are eligible for importation. It will now include processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture's Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible.

Horticultural Products

For years, China had not approved longstanding market access requests for a variety of U.S. horticultural products, despite having received sufficient technical and scientific data justifying market access. Affected products include potatoes, nectarines, blueberries, and avocados, among others. In the Phase One agreement, China agreed to sign and implement new phytosanitary protocols to allow imports of fresh potatoes for processing, blueberries, California nectarines, and California avocados from the United States. China also agreed to allow imports of barley, alfalfa pellets and cubes, almond meal pellets and cubes, and timothy hay from the United States.

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 wheat, corn, and soybeans, as well as intermediate processed products of these commodities.

SERVICES

Overview

The prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, while the United States maintained a \$38.8 billion surplus in trade in services with China in 2018 (latest data available), the U.S. share of China's services market remained well below the U.S. share of the global services market.

In 2019, numerous challenges persisted in a range of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including banking, securities and asset management, insurance, electronic payments, cloud computing, telecommunications, online video and entertainment software, film production and distribution, express delivery, and legal services. 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, all of which undermines U.S. services suppliers' ability to take advantage of market access opportunities in China. China also has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One agreement addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating, and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations, and various discriminatory regulatory requirements. Removal of these barriers should allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market.

Banking Services

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from establishing, expanding, and obtaining significant market share in China. Recently, China has taken some steps to ease or remove market access restrictions, but those steps have not yet strongly manifested themselves in terms of increased market share, as foreign banks held only 1.6 percent of banking assets in China in 2019.

Over the past two years, China has removed the \$10 billion minimum asset requirement for establishing a foreign bank in China and the \$20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China has also removed the cap on the equity interest that a single foreign investor can hold in a Chinese-owned bank, although it is not yet clear whether, in practice, China will allow any interested foreign banks to take advantage of this opening.

At the same time, discriminatory and non-transparent regulations have limited foreign banks' ability to participate in China's market. For years, one key example involved foreign financial institutions seeking to serve as Type-A lead underwriters for all types of non-financial debt instruments. In a positive development, in July 2019, China announced that it would allow foreign financial institutions to obtain the sought-after Type-A lead underwriting licenses. However, China has not yet provided clarity as to how it will evaluate license requests.

In the Phase One agreement, China committed to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by taking into account their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to take into account the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

Securities, Asset Management, and Futures Services

China maintains a foreign equity cap of 51 percent for the securities, asset (i.e., fund) management, and futures sectors. China has licensed several wholly foreign-owned companies to provide private asset 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 the Phase One agreement, China committed to remove the foreign equity caps in the securities, asset management, and futures sectors by no later than April 1, 2020. It also committed to ensure that U.S. suppliers of securities, asset management, and futures services are able to access China's market on a non-discriminatory basis, including with regard to the review and approval of license applications.

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 low. In the life, pension, and health insurance sectors, China maintains foreign equity caps and only permits foreign companies to establish as Chinese-foreign joint ventures. 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 *Negative List for Foreign Investment* indicates that China has liberalized insurance brokerage services, China in practice seems to continue to restrict the scope of insurance brokerage services that foreign companies can provide. Meanwhile, some U.S. insurance companies established in China encounter difficulties in getting the Chinese regulatory authorities to issue timely approvals of their requests to open up new internal branches to expand their operations.

In the Phase One agreement, China committed to remove accelerate the removal of the foreign equity caps for life, pension, and health insurance no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating requirement, known as a "seasoning" requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

Electronic Payment Services

In 2019, China continued to place unwarranted restrictions on foreign companies, including major U.S. credit and debit card processing companies, which have been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. In a WTO case that it launched in 2010, the United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not take needed steps even to allow foreign suppliers to apply for licenses until June 2017, when China's regulator – the People's Bank of China (PBOC) – finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before even being able to apply for an actual license.

Currently, as of January 2020, over six years after China had promised to comply with the WTO's rulings, no U.S. supplier of electronic payment services has been able to secure the license needed to operate in China's market due largely to delays caused by PBOC. Indeed, at times, PBOC refused even to accept applications to begin preparatory work from U.S. suppliers, the first of two required steps in the licensing process.

Throughout the time that China has actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its electronic payment services network abroad, including in the United States. 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.

In the Phase One agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. The United States will closely monitor PBOC's licensing process going forward to ensure China's compliance with its commitments in the Phase One agreement.

Internet-enabled Payment Services

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees in a sector that previously had been unregulated. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S. industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. 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 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in the case of other ICT sectors, PBOC requires suppliers to localize their data and facilities in China. As a result, while China has ostensibly opened this sector to foreign participation, its data localization requirements effectively block market access for most foreign Internet-enabled payment suppliers. The United States will continue to closely monitor developments in this area.

Telecommunications Services

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. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

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

Internet Regulatory Regime

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

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

Voice-over-Internet Protocol Services

While computer-to-computer voice-over-Internet (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.

Cloud Computing Services

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

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 WTO General Agreement on Trade in Services (GATS) commitments include services relevant to both of these approaches, neither one is currently open to foreign-invested companies in China.

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

Theatrical Films

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

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following the summit meeting between President Trump and President Xi in Buenos Aires on December 1, 2018. To date, no agreement has been reached on the further meaningful compensation that China owes to the United States. Going forward, the United States will continue pressing China to fulfill its obligations.

Audio-visual and Related Services

China prohibits foreign companies from providing film production and distribution services in China. In addition, China's restrictions in the area of theater services have wholly discouraged investment by foreign companies in cinemas in China.

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, prohibits investment in TV production, prohibits foreign investment in TV stations and channels in China, and imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration's (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in each of several categories, including foreign movies, TV shows, cartoons, documentaries, and other foreign TV programs, made available for display via broadcasting institutions and online audiovisual-content platforms. It also would prohibit foreign TV shows in prime time.

Online Video and Entertainment Software Services

China restricts the online supply of foreign video and entertainment software through measures affecting both content and distribution platforms. With respect to content, China requires foreign companies to license their content to Chinese companies. China also imposes burdensome restrictions on content, which are implemented through exhaustive content review requirements that are based on vague and otherwise non-transparent criteria. With respect to distribution platforms, NRTA, formerly the State Administration of Press, Publication, Radio, Film, and Television, has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. NRTA has also instituted numerous measures that prevent foreign suppliers from qualifying for a license, such as requirements that video platforms all be Chinese-owned. NRTA and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution.

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 Chinese service suppliers when awarding business permits.

Legal Services

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also restricts the ability of foreign law firms to represent their clients before Chinese government agencies and imposes lengthy delays on foreign law firms seeking to establish new offices. Reportedly, China is considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

Cross-border Data Transfers and Data Localization

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

TRANSPARENCY

Overview

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

Publication of Trade-related Measures

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

Notice-and-comment Procedures

In its WTO accession agreement, China committed to provide a reasonable period for public comment before implementing new trade-related laws, regulations, and other measures. While little 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. 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.

Currently, despite continuing U.S. engagement, China still needs to improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also needs to formalize and improve its use of notice-and-comment procedures for so-called "normative documents," which are regulatory documents that do not fall into the category of administrative regulations or departmental rules but still impose binding obligations on enterprises and individuals.

Translations

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

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

As previously reported, China's implementation of the *Anti-monopoly Law* poses multiple challenges. A key concern is the extent to which the *Anti-monopoly Law* is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the *Anti-monopoly Law* does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of the State-owned Assets Supervision and Administration Commission. In addition, provisions in the *Anti-monopoly Law* protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Many U.S. companies have cited 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 *Anti-monopoly Law* investigative processes. For example, through the threat of steep fines and other punitive actions, NDRC has pressured foreign companies to "cooperate" in the face of unspecified allegations and has discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese authorities sometimes make "informal" suggestions regarding appropriate company behavior, strongly suggesting that a failure to comply may result in investigations and possible punishment.

Another concern involves state-directed mergers of state-owned enterprises. SAMR does not publish decisions about these "administrative mergers," so it is not clear how SAMR addresses them. It is possible for these transactions to provide the merged company with excessive market power that can be used anti-competitively in China and in markets around the world.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade surplus with Colombia was \$642 million in 2019, a 53.3 percent decrease (\$733 million) over 2018. U.S. goods exports to Colombia were \$14.8 billion, down 2.5 percent (\$378 million) from the previous year. Corresponding U.S. imports from Colombia were \$14.1 billion, up 2.6 percent. Colombia was the United States' 22nd largest goods export market in 2019.

U.S. exports of services to Colombia were an estimated \$7.0 billion in 2018 (latest data available) and U.S. imports were \$3.7 billion. Sales of services in Colombia by majority U.S.-owned affiliates were \$5.2 billion in 2017 (latest data available), while sales of services in the United States by majority Colombia-owned firms were \$130 million.

U.S. foreign direct investment (FDI) in Colombia (stock) was \$7.7 billion in 2018, a 7.1 percent increase from 2017. U.S. direct investment in Colombia is led by mining, manufacturing, and finance and 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 includes disciplines on customs administration and trade facilitation, technical barriers to trade, government procurement, investment, electronic commerce, telecommunications, intellectual property rights, transparency, and labor and environmental protection.

IMPORT POLICIES

Tariffs

The first tariff reductions under the CTPA took place upon entry into force on May 15, 2012, and subsequent tariff reductions occur on January 1 of each year. The ninth round of tariff reductions took place on January 1, 2020. The CTPA tariff rates are applied on the U.S. products that meet the CTPA's rules of origin. U.S. consumer and industrial products will be duty free under the CTPA as of 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 of the CTPA, and duties on most other U.S. agricultural goods phase out over a period of 5 to 12 years. Tariffs on the most sensitive products for Colombia, such as certain poultry products, certain dairy products, sugar, and rice, will be phased out from between 15 years to 19 years from entry into force. U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for corn, rice, poultry parts, dairy products, sorghum, dried beans, standard grade beef, animal feeds, and soybean oil. As quota volumes increase and over-quota duties are phased out, U.S. access to the Colombian market for those products will increase.

Nontariff Barriers

Truck Scrappage

Prior to March 2013, new freight trucks over 10.5 metric tons (mt) could be legally registered in Colombia either by paying a “scrappage fee” to the government, or by demonstrating that an old freight truck of equivalent capacity had been scrapped and its registration cancelled (the “1x1” policy). In March 2013, without public consultation or a transition period, Colombia issued Decree 486, which eliminated the option to pay the “scrappage fee.” As a result, scrapping an old truck of equivalent cargo capacity became a condition for the registration of new freight trucks over 10.5 mt, a policy change that significantly affected previously robust sales of imported trucks (which were generally over 10.5 mt). U.S. stakeholders estimate they lost \$1 billion in sales since March 2013. In September 2016, Colombia issued Decree 1517, which provided the “1x1” scrappage policy would be terminated no later than December 31, 2018.

Following the inauguration of President Ivan Duque in August 2018, the new administration indicated that it could not meet the December 31, 2018 end date for the scrappage policy. Following bilateral consultations, in November 2018, the Colombian administration issued Decree 2156, which extended an interim system until June 30, 2019. Due to continued U.S. engagement, Colombia ended the “1x1” scrappage policy on June 30, 2019.

Buyers of new trucks continue to be required to pay a registration fee equivalent to 15 percent of the value of the new truck. Buyers can avoid the fee by scrapping an old truck, which entitles them to a scrapping certificate that waives the fee. Colombia does not place a cap on the number of available certificates. U.S. industry members have expressed concern that the Colombian government could change the fee at any time, and prefer that the program be temporary, capped at the current rate of 15 percent, and eliminated entirely in 2021. The United States will continue to monitor Colombia’s actions in this area.

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 “abbreviated comparability” pathway appears to be incompatible with international norms for biosimilars pathways. It remains unclear what data, clinical trials, or other information will be required to demonstrate biosimilarity with the reference products. 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 2014-2018 National Development Plan (2014-2018 NDP) law gave the Colombian health ministry the authority to require two additional assessments before medicines and medical devices can receive or renew a sanitary registration, which is required before a product can be sold in Colombia: (1) a health technology assessment by the Institute for Health Technological Evaluation; and (2) a price determination by the health ministry. The Ministry of Health subsequently developed implementing regulations for the relevant provisions, and in October 2017 published for public comment a draft presidential decree related to this issue. Decree 433 was enacted on March 5, 2018, and subsequently modified by Decree 710 of April 21, 2018, to take into account additional comments. The decrees clarify that Colombia will not condition regulatory approvals on factors other than safety and efficacy. Colombia’s Council of State suspended the application of these decrees on September 17, 2019. The United States will continue to monitor this issue and press Colombia to address it, and encourage Colombia to implement the 2014-2018 NDP provisions in such a way as to ensure that they do not undermine innovation.

Customs Barriers and Trade Facilitation

As of early March 2020, Colombia has not ratified the WTO Trade Facilitation Agreement (TFA), but is expected to do so in the first half of 2020. The Colombian congress approved the TFA in Law 1879 and then-president Juan Manuel Santos signed Law 1879 of January 2018. On October 23, 2019, Law 1879 was approved by the Constitutional Court, a step required for international agreements before Colombia can formally deposit its instrument of ratification with the WTO.

Colombia has significantly delayed implementation of the express delivery provisions of the CTPA (Article 5.7), in particular the \$200 *de minimis* threshold, which generally exempts duties and taxes for express shipment deliveries valued at \$200 or less. The CTPA provided Colombia a two-year transition period after entry into force of the CTPA to implement the *de minimis* provision, and the threshold was originally scheduled to be implemented by January 1, 2014, under Law 1607 of 2012. However, Colombia subsequently delayed implementation until January 1, 2017, and then again in March 2018, when Colombia's National Directorate of Taxes and Customs (DIAN) issued Decree 349. Decree 349 further postponed implementation until November 30, 2019. However, these reforms still have yet to be implemented, and Colombia has not provided clarity on a revised timeline for implementation of the *de minimis* provision. The United States is assessing next steps.

Colombia has also significantly delayed implementation of customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies. In Decree 349 of 2018, DIAN delayed making these reforms, originally slated for implementation in 2016 under Decree 390 of 2016, until November 30, 2019. These reforms have yet to be implemented, and Colombia has not provided clarity on a renewed timeline. Slow customs clearance in Colombia hampers both imports and exports, and the ability to submit electronic copies of documents would help accelerate customs clearances. The TFA includes provisions on accepting customs documents in electronic format before shipments arrive at port.

Colombia continues to use a reference price system for imports of certain goods, including textiles, apparel, and footwear. Under this system, importers of these products must pay duties and value-added tax assessments based on reference prices that are often substantially higher than the declared value of imported goods. Apparel imports that do not meet the minimum threshold value are subject to additional administrative and operational requirements, such as 30-day pre-arrival notice and the posting of single-entry bonds equal to 200 percent of the reference price value. The U.S. Government has raised and will continue to raise concerns about these restrictive customs practices, especially as they affect products involving U.S. companies.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Cosmetic Soaps

Resolution 837 of 2017, issued jointly by the Ministry of Health and the Ministry of Environment and Sustainable Development, established the maximum level of phosphorus and the level of biodegradability of surfactants in detergents and soaps. The resolution also applied to cosmetic soaps, despite the fact that these products do not typically include ingredients or chemicals for which biodegradability is a concern. The United States consistently raised concerns about this issue on the margins of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) from June 2017 to March 2018. Colombia initially delayed implementation of the measure until May 5, 2018, and issued a revised decree (Decree 1770) in May 2018. The revised decree rescinds the requirement for cosmetic soaps to undergo biodegradability testing, and requires the government of Colombia to review the requirement to test cosmetic soaps for

phosphorous content in 18 months, by November 4, 2019; however, as of early March 2020, the Ministry of Health had not completed its review or taken a decision on the matter. The United States will continue to monitor this issue to ensure that Colombia does not subject cosmetic soap products to unduly burdensome testing and certification requirements.

Maximum Sodium Limits

In August 2019, Colombia notified to the WTO ([TBT/N/COL/238](#)) a proposed regulation concerning a maximum sodium content for 67 processed food products that aims to address non-communicable diseases (NCDs) by seeking to lower the sodium intake of the population. The proposed measure would require different maximum sodium requirements for each of the 67 products listed. The proposed regulation sets first-year and third-year maximum sodium limits. The United States understands that, once the relevant dates for compliance with the measure have passed, listed products exceeding those levels will not be eligible for the “certificate of compliance” included in the measure demonstrating the product’s compliance with the sodium limits. It is unclear if products not accompanied by such a certificate will be allowed for sale in Colombia, or whether they will be subject to a yet undefined penalty. The United States provided comments to Colombia on October 31, 2019, and raised concerns bilaterally during the November 2019 WTO TBT Committee. Colombia confirmed that it is reviewing and responding to comments. The U.S. Department of Agriculture estimates that the proposed regulation could affect at least \$52 million in U.S. exports.

Sanitary and Phytosanitary Barriers

Food Safety Audits of Foreign Plants Producing Animal-derived Products

In 2014, the Colombian Ministry of Health issued Decree 539 of 2014, which proposed to have the Colombian food safety authority (INVIMA) audit all foreign plants that manufactured and exported animal-derived products to Colombia. Products affected by this regulation included meat (beef and pork), poultry, dairy, and seafood. Following engagement by the United States, Colombia annulled Decree 539 and issued Decree 2478 in December 2018. Decree 2478 introduced a provision that allows Colombia to recognize the food safety systems of free trade agreement partners, thereby exempting U.S. federally regulated establishments from individual inspection and approval requirements. Colombia has yet to issue the related implementing procedures and notify the measure to the WTO.

GOVERNMENT PROCUREMENT

Colombia is not a Party to the WTO Agreement on Government Procurement; however, it has been an observer to the WTO Committee on Government Procurement since February 1996. Additionally, the TPA contains disciplines in government procurement.

INTELLECTUAL PROPERTY PROTECTION

Colombia was placed on the Watch List in the 2019 Special 301 Report. In July 2018, Colombia signed into law amendments to the copyright law intended to implement CTPA requirements after the Colombian Constitutional Court invalidated in 2013 a law on copyright and other certain CTPA obligations on procedural grounds. Colombia has not yet implemented Internet Service Provider (ISP) liability limitations and notice and takedown procedures and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. During 2019, Colombia engaged with the United States on these outstanding CTPA commitments, particularly with regard to implementation of ISP liability limitations and notice and takedown procedures.

The 2014-2018 NDP included a requirement to develop an intellectual property (IP) rights enforcement policy to help guide, coordinate, and raise awareness of IP rights enforcement. While progress was made in certain areas, the United States raised concerns over provisions that could weaken innovation and intellectual property systems, such as those concerning conditions for pharmaceutical regulatory approvals. As noted above, in 2018, Colombia issued decrees to clarify that it will not condition regulatory approvals on factors other than safety and efficacy. While the National Police, DIAN, and Fiscal and Customs Police (POLFA) increased their enforcement efforts in 2019, Colombia continues to experience high levels of counterfeiting and piracy, with right holders raising specific concerns with illicit recordings in cinemas, insufficient enforcement at borders, in free trade zones, and in physical markets, online and mobile piracy, and the rampant availability of hardware used exclusively for pirating broadcasting signals.

SERVICES BARRIERS

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

Audiovisual Services

Under the CTPA, Colombia committed to reduce its domestic content requirement from 50 percent to 30 percent for free-to-air national television programming broadcast during the hours of 10:00 to 24:00 on Saturdays, Sundays, and holidays. In 2013, Colombia enacted legislation to implement this obligation. However, in 2013, Colombia's Constitutional Court invalidated the legislation on procedural grounds. The United States will continue to press Colombia to revise its legislation to implement its obligations under the agreement.

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.

Telecommunications Services

In June 2019, Colombia adopted the Law of Modernization of the Information and Communications Technologies Sector, which makes significant changes to its telecommunication law, including changing the length of spectrum licenses from 10 to 20 years. The law also creates a convergent regulator that combines the existing National Television Authority and Communications Regulation Commission.

Roaming

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

Spectrum

After multiple delays, on December 20, 2019, the Colombian government completed an auction of spectrum in the 700 and 1900 MHz bands, a process initiated by the Ministry of Information Technologies and Communication (MinTIC) in February 2017. This spectrum can be particularly useful for new entrants and smaller competitors because of technical characteristics that support coverage of larger geographic areas with less infrastructure, enabling a provider to quickly and economically build up its customer base, particularly where population density is lower.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was \$1.1 billion in 2019, a 34.7 percent decrease (\$561 million) over 2018. U.S. goods exports to Costa Rica were \$6.2 billion, down 4.5 percent (\$291 million) from the previous year. Corresponding U.S. imports from Costa Rica were \$5.1 billion, up 5.5 percent. Costa Rica was the United States' 38th largest goods export market in 2019.

U.S. exports of services to Costa Rica were an estimated \$2.1 billion in 2018 (latest data available) and U.S. imports were \$3.5 billion. Sales of services in Costa Rica by majority U.S.-owned affiliates were \$1.9 billion in 2017 (latest data available), while sales of services in the United States by majority Costa Rica-owned firms were \$82 million.

U.S. foreign direct investment (FDI) in Costa Rica (stock) was \$1.6 billion in 2018, a 3.7 percent increase from 2017. U.S. direct investment in Costa Rica is led by manufacturing, professional, scientific, and technical services, and mining.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs and Taxes

Tariffs

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

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

Rica monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure Costa Rica issues these permits in a timely manner.

Taxes

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

Nontariff Barriers

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Costa Rica, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including Costa Rica, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, agreed to share proposed measures with the public and the other CAFTA-DR countries for comment, and agreed to share with other CAFTA-DR countries other information to combat illegal transshipment of goods in circumvention of a country's customs laws.

Costa Rica, through the Ministry of Foreign Trade, promotes the implementation of the Border Integration Program. The Border Integration Program seeks to enhance Costa Rica's competitiveness by modernizing its border infrastructure, equipment, and systems to efficiently and effectively coordinate the control activities performed by border agencies. Strengthening relevant information technology tools will help both Costa Rican customs and traders take full advantage of the new border infrastructure, and improvement of the customs information systems, the Foreign Trade Single Window, and the Single Investment Window are included in the Border Integration Program, facilitating trade and digitalizing custom procedures. The United States continues to encourage Costa Rica to expand its use of electronic processing in the interest of further facilitating trade.

Cosmetics and Dietary Supplements

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

Beginning in 2014, U.S. producers of dietary supplements expressed concerns regarding Costa Rican product registration and technical regulations related to nutritional and dietary supplements. Because the United States does not regulate dietary supplements as pharmaceuticals, U.S. manufacturers of these products generally do not have the certification and product analysis that is required for products to be sold in Costa Rica under the Central American Technical Regulation for Natural Medicines.

Certification Requirements for Tires

In February 2019, Costa Rica approved a new regulation covering safety standards for tires that was scheduled to take effect one year from issuance. The new regulation recognizes the U.S. National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard (FMVSS) regulations as one basis for compliance. However, it requires third party certification, while in the U.S. market, manufacturers are able to self-certify. This remains a priority issue for resolution to ensure no disruption occurs in the importation of U.S. tires into Costa Rica. Timing for the new regulation to take effect has been delayed until August 2020, and the U.S. and Costa Rican governments are working towards a resolution.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Telecommunications

Costa Rica's telecommunications regulator (SUTEL) imposes a requirement that can result in the frequent retesting and recertification of telecommunications hardware or software following some categories of updates. Some stakeholders raised concerns that Costa Rica does not follow international procedures for testing and certification of mobile handsets and other information and communications technology (ICT) products. Concerns have been raised 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's rationale is that software updates often have a major impact on user experience and stands by its current practice of registering all modifications and requiring varying levels of testing according to the characteristics of the modifications. SUTEL asserts that its automation of the process has expedited results, and that its testing processes take no more than 15 business days.

Product Registration

Costa Rica requires product registration for food products, additives, raw materials, and animal feed and pet food. Additionally, companies that want to sell their products in the market are required to submit necessary documents to the Ministry of Health to receive approval. One of such documents is a Certificate of Free Sale, which is required to have an apostille. Industry has raised concerns that the process is burdensome and can delay introduction of products into the market by several months.

Used Clothing

On December 17, 2018, the Costa Rican Ministry of Health published in the National Gazette a new regulation for imports of used clothing, originally set to take effect on June 18, 2019, but later delayed until January 2020 and again through the end of June 2020. The regulation requires importers to wash every unit imported at 60 degrees Celsius at a laundry facility enrolled with the Health Ministry and certified to provide the service. This additional procedure increases the costs for importers of used clothing, which are mostly imported from the United States. Industry representatives have filed a complaint with an administrative court and, the case remains open as of March 2020. The U.S. Government remains in close communication with representatives of the local importers association, Ministry of Health, and Ministry of Foreign Trade, seeking resolution of this issue.

Sanitary and Phytosanitary Barriers

Costa Rica has decreased the use of sanitary and phytosanitary measures as a tool to obstruct trade over the past two years. U.S. exporters and Costa Rican importers reported a normal flow of the issuance of import permits for sensitive commodities. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and the Ministry of Agriculture of Costa Rica conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

U.S. exporters continue to complain about the high cost of quarantine fumigations at Costa Rican ports of entry. Quarantine fumigations are a remediation measure that may be needed when shipments are intercepted with quarantine pests. However, some exporters have expressed concern that excessive fumigation costs have prompted them to forego this option and to send the containers back to the United States. The U.S. Government continues to meet with the Plant Health and Customs Department to find a solution.

Costa Rica has a 2016 regulation requiring extensive questionnaires for animal product facilities that are exporting to Costa Rica. Most exporting facilities find this process overly burdensome and have complained that the questionnaire requests irrelevant proprietary information. Many of the exporting facilities that have completed the questionnaires have yet to be registered by the Costa Rican government.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires procuring entities to 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) is sometimes disadvantaged in public bids when competing against Costa Rican state-owned enterprises in both the ICT and insurance sectors. Article 2 of the Public Contracting Law allows for the non-competitive awarding of contracts to public entities if officials of the awarding entity certify the award to be an efficient use of public funds. A leading business association asserts that, from January to August 2019, the government invoked Article 2 in 21 instances for a total contracted amount of over \$13 million in ICT goods and services. The Costa Rican government is aware of this issue and has worked to reduce the value of Article 2 exceptions. Private sector insurance companies and brokers believe that the Costa Rican government preferentially contracts with the state-owned insurance company, Instituto Nacional de Seguros (INS), despite a requirement from the General Comptroller's office that government entities, such as the state-owned electricity company receive competitive quotes for insurance policies. In 2017, however, the Social Security Administration (CCSS) contracted with a private insurance company. In 2019, there was a re-bid for that same contract and the private company won, based both on cost and the company's demonstrated good service in paying claims. This may signal a trend towards more competitive insurance contracting by government entities. The United States will continue to monitor Costa Rica's government procurement practices to ensure they are consistent with CAFTA-DR obligations.

The electronic procurement platform, Sistema Integrado de Compras Públicas (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. Of the 270 Costa Rican government agencies legally obligated to migrate to the system, 229 have done so as of September 2019. As a digital platform, SICOP requires that suppliers use the Costa Rican digital signature; however, SICOP offers an alternative digital signature for foreign suppliers through GlobalSign and, as of 2019, 347 foreign firms have registered through that facility, many of them actively participating with bids.

Costa Rica is not a Party to the World Trade Organization (WTO) Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2015.

INTELLECTUAL PROPERTY PROTECTION

Costa Rica remained on the Special 301 Report Watch List in 2019. The United States recognizes progress made by Costa Rica this past year, including issuing decrees to address online piracy and to require identification of generic components of multi-component terms when registering geographical indications. The United States also recognizes Costa Rica's increased intra-governmental coordination on intellectual property (IP) issues, active criminal IP investigations, and the development of new tools for the IP Office to enhance its trademark, industrial design, and patent functions. While the United States recognizes this progress, the effectiveness of these positive developments remains to be demonstrated through enforcement and results on the ground. The United States continues to urge Costa Rica to bolster IP enforcement to curb online piracy; address cumbersome border measure processes to deter counterfeit and pirated goods, including by creating a formal customs recordation system; and implement a process to monitor and work to eliminate government use of unlicensed software. The United States strongly encourages Costa Rica to build on initial positive steps it has taken to protect and enforce IP, and to continue with bilateral discussions of these issues.

SERVICES BARRIERS

Insurance Services

Private insurance companies continue to face challenges in light of the market power that INS derives from its former monopoly position. Nevertheless, the competitive environment for those companies has gradually improved as Costa Rica's insurance regulator has addressed many of their specific concerns. As a result, INS's percentage of the insurance market decreased from 85 percent in 2014 to 71.5 percent in 2019 (latest data available).

INVESTMENT BARRIERS

Costa Rica's regulatory environment can pose significant barriers to investment in some sectors. 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. The Costa Rican government is aware of these challenges and is actively seeking improvements to address burdens. Advances in areas such as air transport, domestic passenger transport, and the financial sector, undertaken as part of the accession process to the Organization for Economic Cooperation and Development (OECD), will provide for non-discrimination between foreign and domestic economic operators and better conditions for investment.

OTHER BARRIERS

Bribery and Corruption

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 exceptionally time consuming. CAFTA-DR contains strong public sector anti-bribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities. Costa Rica is a member of the United Nations Convention against Corruption, the Inter-American Convention against Corruption, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was \$645 million in 2019, a 31.2 percent decrease (\$292 million) over 2018. U.S. goods exports to Cote d'Ivoire were \$278 million, down 10.0 percent (\$31 million) from the previous year. Corresponding U.S. imports from Cote d'Ivoire were \$924 million, down 25.9 percent. Cote d'Ivoire was the United States' 123rd largest goods export market in 2019.

TRADE AGREEMENTS

Cote d'Ivoire is member of the West African Economic and Monetary Union (WAEMU) and a member of the larger Economic Community of West African States (ECOWAS). It is also a member of the WAEMU customs union. Cote d'Ivoire participates in the ECOWAS free trade area and its common external tariff (CET), which was slated to be fully harmonized by 2020. In practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline. Cote d'Ivoire has ratified both the European Union-West Africa Economic Partnership Agreement (EPA) and a bilateral EPA with the European Union (EU). The bilateral EPA has entered into force; however, the EU-West Africa EPA has not. Cote d'Ivoire is also a member of the Organisation pour l'Harmonization en Afrique du Droit des Affaires, an organization that standardizes a broad range of African legal systems that previously were characterized by a wide disparity in business law, codes, rules, regulations and local conventions affecting business. The agreement creates a number of uniform acts and sets up organizations when necessary to implement the acts. In December 2018, Cote d'Ivoire ratified the African Continental Free Trade Agreement (AfCFTA), which entered into force on May 30, 2019.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Cote D'Ivoire's average Most Favored Nation (MFN) applied tariff rate was 12.2 percent in 2019. Cote D'Ivoire's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.6 percent for non-agricultural products in 2018 (latest data available). Cote d'Ivoire has bound 34 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 11.2 percent.

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

Nontariff Barriers

A number of items are subject to import prohibitions, restrictions, or prior authorization including: petroleum products, animal products, live plants, seeds, arms and munitions, plastic bags, distilling equipment, saccharin, narcotics, and explosives. Textile imports are subject to some authorization requirements by the External Trade Promotion Office.

Import Licensing

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

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

Import Restrictions

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

Customs Procedures and Trade Facilitation

All goods imported into Cote d’Ivoire must have a certificate of compliance for the relevant requirements to clear customs. Three European companies, BIVAC (affiliated to the French group Bureau Veritas) and the Swiss-based firms COTECNA and SGS are contracted to carry out verifications of goods imported into Côte d’Ivoire with a value exceeding CFA 1 million (approximately \$1,700).

Cote d’Ivoire notified the latest update to its customs valuation legislation in June 2002, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE

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

All merchandise packaging must be clearly labeled as to the merchandise’s origin. All packages must clearly mention “MADE IN *Country of origin*.” Manufactured food products must be labeled in French and have an expiration date. If an expiration date does not appear on the label, health officials may interpret the date of manufacture as an expiration date and deny entry of the product.

GOVERNMENT PROCUREMENT

The government publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d’Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The Bureau National d’Etudes Techniques et de Développement, the government’s

technical and investment planning agency and think tank, sometimes serves as an executing agency in major projects to be financed by international institutions.

The Direction des Marchés Publics, is a centralized office of public bids in the Ministry of Finance, to help ensure compliance with international bidding practices. While the procurement process is open in theory, in practice it is often opaque and government contracts are occasionally awarded outside of public tenders. Some foreign companies appear to secure bid awards as a result of longstanding relations with government officials. Though not formally required, foreign companies often find it essential to partner with a local company when submitting a bid. During negotiations on a tender, the government at times imposes local content requirements on foreign companies. In other instances, the government has awarded sole source bids without tenders, citing as a justification the high technical capacity of a firm or a declared emergency. Many firms continue to point to corruption as an obstacle that affects procurement decisions. In July 2019, as part of the continued transposition of the 2009 WAEMU directives into Ivoirian law, the government endorsed a new public procurement code to increase transparency and address weaknesses in the country's procurement process.

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

Cote d'Ivoire is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

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

SERVICES BARRIERS

Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. In order to practice law in a courtroom, one must be accredited by the Ivoirian bar association. However, membership in that association requires Ivoirian nationality. Those solely providing legal advice are not subject to this restriction. There are restrictions on the registration of foreign nationals by the accountants association (which also requires Ivoirian nationality) unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

INVESTMENT BARRIERS

Cote d'Ivoire has restrictions on and requires prior approval for foreign investment in the health sector, in law and accounting firms, and in travel agencies. In negotiating the terms of an investment, the government will often require the use of local content. Majority foreign ownership of companies in these sectors is not permitted, though foreign companies currently operate in all these sectors in partnership with local firms and with government permission.

The Ivoirian investment code provides tax incentives for investments larger than \$1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax regulations require the additional approval of the Ministry of Finance and Economy and the Ministry of Industry. The clearance procedure for planned investments, if tax breaks are sought, is time consuming and confusing. Even when companies have complied fully with the requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism. In August 2018, the government adopted a new investment code that links some incentives to local job creation, subcontracting with local companies, and to the opening of share capital to local investors. However, the new code cancelled the provision of assistance to investors that suffer losses due to popular unrest.

OTHER BARRIERS

Bribery and Corruption

Bribery and corruption in Cote d'Ivoire are significant concerns. Bribes are reportedly often used to speed up the slow bureaucratic process or to secure a tender. Corruption and lack of capacity in the judicial and security services also have resulted in poor enforcement of private property rights, particularly when the affected company is foreign and the plaintiff is Ivoirian or a long-established foreign resident.

Export Policies

The government encourages domestic processing of agricultural products such as cocoa, cashews, and coffee by imposing a higher export tax on the unprocessed products than on the processed ones.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with Dominican Republic was \$3.7 billion in 2019, a 0.3 percent increase (\$12 million) over 2018. U.S. goods exports to Dominican Republic were \$9.2 billion, up 2.9 percent (\$260 million) from the previous year. Corresponding U.S. imports from Dominican Republic were \$5.6 billion, up 4.7 percent. Dominican Republic was the United States' 30th largest goods export market in 2019.

U.S. exports of services to Dominican Republic were an estimated \$2.0 billion in 2018 (latest data available) and U.S. imports were \$5.2 billion. Sales of services in Dominican Republic by majority U.S.-owned affiliates were \$1.1 billion in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Dominican Republic (stock) was \$2.0 billion in 2018, a 5.6 percent decrease from 2017. U.S. direct investment in Dominican Republic is led by manufacturing, wholesale trade, and information services.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs and Taxes

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 has eliminated tariffs on nearly all agricultural goods, and will eliminate tariffs 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. The Ministry of Agriculture made substantial improvements to its administration of TRQs in 2013 and 2014, however; the 2015 CAFTA-DR TRQs were not issued until March 2015, while 2016 TRQs were not issued until February 5, 2016. For 2017, TRQ's were issued in advance, on December 28, 2016, but the National Commission for Agricultural Imports also issued a separate Resolution 08/2016, under which the Dominican Republic restricted the availability of TRQs for rice and powdered milk, and bean imports in general, to certain months of 2017. In 2018 and 2019, the timing of TRQ issuance was improved. However, the United States will continue to monitor the Dominican Republic's performance and engage bilaterally 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.

Taxes

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.

Nontariff Barriers

Import Licensing

In addition to concerns with the administration of TRQs, the Dominican Ministry of Agriculture continues to administer the issuance of import licenses, known as no objection certificates, 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 continues to be 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 maintain that import ban. Used vehicles less than five years old are not subject to the same restrictions. However, since late 2011, importers of U.S.-made used vehicles less than five years old have reported that the Dominican customs authority has frequently challenged the eligibility of those vehicles to be considered as originating under the CAFTA-DR and therefore eligible for preferential tariff treatment under the Agreement. Dominican customs authorities cited technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address complaints received from exporters of used cars of U.S. manufacture.

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including the Dominican Republic, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including the Dominican Republic, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, sharing proposed measures with the public and the other CAFTA-DR countries for comment, and sharing other information to combat illegal transshipment of goods in circumvention of a Party's customs laws with other CAFTA-DR countries.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Regulation of Steel Rebar

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

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

The United States has repeatedly engaged the Dominican government on this issue, and raised the issue on the margins of the WTO Committee on Technical Barriers to Trade. Extensive bilateral discussion during 2017 and 2018 yielded some progress, with the Dominican Republic reducing customs clearance time for U.S. steel rebar. Uncertainty for U.S. steel rebar exporters remains, however. Despite continued engagement by the United States in 2019, 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 previous practice. Enforcement of the regulation initially focused on dairy products, but was extended to all pre-packaged foods. The enforcement of this regulation has been selective, and products with sticker labels placed locally continue to be sold in the local market. However, local industry representatives have continued to push the Government to actively enforce this regulation. As a result, the Government has established a Commission, including the Ministers of Health and Agriculture, to analyze ways to enforce it more strictly. The United States will continue to monitor the situation and continue to encourage the Dominican government to enforce its regulations in a manner that does not distort trade.

Sanitary and Phytosanitary Barriers

Sanitary Registration

Since March 2018, delays in the process for obtaining sanitary registrations for foods, medicines, and health products from the Dominican government have resulted in higher operating costs and delays moving products to market, according to industry representatives. Since April 2018, the General Directorate of Medicines, Food, and Health Products, which oversees the registration process, has been requesting declarations of product additives, a practice not established in Dominican health law. Industry

representatives note that the Directorate of Medicines, Food, and Health Products' proposed solution (*i.e.*, requiring companies to present an affidavit to replace additives) would constitute an additional registration requirement. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure. However, the persistence of requiring business confidential information, such as the exact product formula, continue to make registration difficult for many products.

GOVERNMENT PROCUREMENT

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

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

The Dominican Republic is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The Dominican Republic remained on the Watch List in the 2019 Special 301 Report. While the Dominican Republic made some progress in reducing its patent application backlog and prioritizing criminal prosecution for trafficking in counterfeit goods, concerns remain. Despite a strong legal framework to implement CAFTA-DR commitments, government agencies lack political will, resources, and the trained personnel to support adequate and effective intellectual property protection and enforcement. Other concerns include lack of coordination among enforcement agencies, widespread satellite signal piracy, government and private sector use of unlicensed software, and inadequate enforcement by the customs authority. The United States will continue to work with the Dominican Republic to address these and other issues.

OTHER BARRIERS

Bribery and Corruption

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

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was \$1.4 billion in 2019, a 68.7 percent increase (\$579 million) over 2018. U.S. goods exports to Ecuador were \$5.5 billion, down 6.2 percent (\$364 million) from the previous year. Corresponding U.S. imports from Ecuador were \$7.0 billion, up 3.2 percent. Ecuador was the United States' 42nd largest goods export market in 2019.

Sales of services in Ecuador by majority U.S.-owned affiliates were \$1.0 billion in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Ecuador (stock) was \$898 million in 2018, a 15.3 percent increase from 2017. U.S. direct investment in Ecuador is led by mining, manufacturing, and finance and insurance.

IMPORT POLICIES

Overview

The current Ecuadorian government, in place since May 2017, has sought to roll back tariff and non-tariff barriers imposed by the former administration and to diversify and liberalize Ecuador's trading relationships. Under Moreno, Ecuador has adopted a policy of gradual trade openness. It is in negotiations to join the Pacific Alliance and has also expressed an interest in negotiating a trade agreement with the United States. To improve Ecuador's economic competitiveness, the government has lowered tariffs on many products, particularly on intermediate goods and electronics.

In 2018, for the first time in nine years, the United States and Ecuador held a meeting of the bilateral Trade and Investment Council (TIC), a structured forum for discussing trade priorities. TIC working groups met through DVC and in-person throughout 2019 to continue the dialogue, with a view toward creating a more positive bilateral trade relationship. Through this dialogue, the United States is working with Ecuador to reduce what the United States views as restrictive trade policies in light of Ecuador's international commitments.

Tariffs and Taxes

Tariffs

Ecuador's average Most Favored Nation (MFN) applied tariff rate was 12.3 percent in 2018 (latest data available). Ecuador's average MFN applied tariff rate was 18.1 percent for agricultural products and 11.3 percent for non-agricultural products in 2018 (latest data available). Ecuador has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 21.7 percent.

When Ecuador joined the World Trade Organization (WTO) in January 1996, it bound most of its tariff rates at 30 percent *ad valorem*; most products bound at higher rates are 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. 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.

Agricultural Products

Ecuador's continued use of the Andean Price Band System (APBS) affects many U.S. agricultural exports. U.S. exports such as wheat, barley, malt barley, and soybeans faced significantly higher total duties in 2019 than in previous years because of a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. Total duties, for example, can reach up to 45 percent for pork and 86 percent for chicken parts. The APBS has a particularly adverse impact on the importation of soybean meal. In the past Ecuador granted a renewable two or three-year tariff exemption for imports of soybean meal. South American trading partners appear to have benefitted from the preferential market access they have with Ecuador, as their market share increased in 2017 and remained high in 2018. In 2019, lower prices for U.S. soybean meal helped to increase U.S. market share. Throughout 2019, the United States encouraged Ecuador in bilateral Trade and Investment Council meetings to make tariff exemptions on both soybean meal and wheat permanent, as these products are needed by Ecuadorian industry and do not compete with domestic production. Ecuador extended the exemptions for five years, beginning in 2020. The longer five-year tariff exemption period for wheat and soybean meal is positive, the United States will continue to work with Ecuador to permanently exempt these products from import tariffs.

Information and Communications Technologies

In October 2019, the Ecuadorian government eliminated tariffs on cellphones, computers, tablets, and laptops that had ranged from 10 to 15 percent; the tariff reduction does not cover other information and communication technology (ICT) goods, such as modems, routers, or wireless equipment. However, the ICT sector continues to be subject to high taxes, such as a 12-percent VAT on internet services and 15-percent special consumption tax for companies with corporate mobile services (data and voice) plans.

Radial Tires

COMEX Decree 026, issued in October 2019, establishes a zero-percent tariff on a global quota amount of radial tires, with the quota of 146,800 units to be divided among ground transportation industry associations registered with the Ministry of Transportation and Public Works.

Raw Materials and Industrial Capital Goods

COMEX Decree 023, issued in October 2019, reduces import tariffs for intermediate goods such as machinery, raw materials, and industrial equipment for the agriculture, fishing, construction, textile, plastics, and footwear industries. The tariffs now range from zero percent to 18.75 percent.

Sports Equipment

COMEX Resolution No. 019-201, effective August 28, 2019, decreases tariff rates for sporting goods and shoes, subject to authorization of the Secretariat of Sports. For sports shoes, including soccer, athletic, basketball, gym, tennis, and training shoes, the new tariff will be 15 percent, a change from the previous compound tariff of 10 percent plus \$6 per pair. Specialized sporting equipment, including bicycles, helmets, tennis rackets, saddles, tennis balls, and softball and baseball equipment (excluding balls), will be subject to a zero percent tariff, down from previous tariffs ranging from 15 to 30 percent.

For tariffs to be waived, importers need to file a request with the Secretariat of Sports, the entity charged with managing COMEX Resolution No. 019-201 and authorizing imports of sports equipment at the lower rate. To access the tariff benefits, the importer must complete a form for each import, and submit it to the Secretariat of Sports. Once the Secretariat of Sports has verified the form, it will issue a document that will provide for the import to benefit from the lower tariff rate.

Taxes

Consumer Goods

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

Nontariff Barriers

Import Bans and Restrictions

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

Import Licensing

Enacted in June 2013, COMEX Resolution 102 and MAG Resolution 299-A imposed a mandatory, cumbersome process for allocating import licenses for 55 agriculture tariff lines, including dairy, potatoes (including French fries), beef, pork, chicken, turkey, beans, sorghum, and corn. In November 2015, Resolution 316 replaced Resolution 299-A, and established a more burdensome framework. Under Resolution 316, MAG's Undersecretary of Commercialization is vested with full authority to decide and administer the granting of non-automatic import licenses. After consulting with domestic producers, MAG allocates single import licenses on a per-shipment basis.

Industry stakeholders report that the process for obtaining import permits is deliberately trade restrictive. A non-automatic issuance policy has been implemented that, due to the difficulty of obtaining import permits, incentivizes domestic sourcing of products at the expense of imported products. While all food and agricultural products are subject to this policy, beef, pork, and dairy products are particularly targeted. For these products, an importer's total import allowance cannot surpass an amount determined by MAG. For dairy products, MAG also requires that interested parties provide sales and consumption forecasts before it will authorize imports. In the case of pork, MAG requires proof of local pork purchases to assign amounts for import licenses. The United States has raised questions regarding Ecuador's import licensing process in light of its impact on trade and Ecuador's trade commitments.

Customs Barriers and Trade Facilitation

Importers must register with Ecuador's National Customs Service (SENAE) to obtain a registration number for all products regulated by Ecuadorian Institute of Standards (INEN).

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Footwear and accessories

Ecuadorian law (INEN 013 of 2009) 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. These requirements far exceed regional language labeling requirements. As a result, U.S. footwear companies need to make production runs specifically for Ecuador, to sew labels to the shoe upper during manufacture or sew a label after manufacture. In 2017 this requirement was modified to make more lenient the requirements for what information would be required on sewn labels. As a result, sewn labels must now include only the material composition (percentage), country of origin, and safety instructions. For all other labeling requirements an adhesive tag suffices. Ecuador is working with other Andean Community members to issue a regional labeling policy for footwear, apparel, and accessories, among others, based on international standards.

Cosmetics

The Andean Community ratified March 2019 Decision 833 that lays out requirements and procedures for production, import and sale of cosmetic products in the Andean Community. It includes the ISO 22716:2007(E) standard for cosmetics good manufacturing practices. While ratified by member countries, none has yet to implement the standard.

Standards

During 2019, the Ecuador Institute of Standards (INEN) simplified the import process of several products through the revision of 281 technical regulations to comply with international standards. Separately, in July 2019 INEN proposed to eliminate 89 technical regulations. Of these, 29 included duplicate document filings between INEN and the Ecuadorian Agency for Sanitary Regulation, Control and Vigilance; the remainder were deemed unnecessary. Some of the product categories include candles, floor wax, pens, cutlery, homeware, household tools, electrical water dispensers and speakers, among others. This proposal is still under technical review.

Sanitary and Phytosanitary Barriers

Processed Foods—Quality Compliance and Prior Authorization Requirements

Processed food products of animal origin require prior authorization from three government agencies within the Ministry of Agriculture and Livestock, including the animal and plant health authority AGROCALIDAD, the Undersecretary of Commercialization, and the Undersecretary of Livestock Development. For meats and dairy products, a market 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.

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. For over 50 food and agricultural products, Ecuador also requires prior import authorization from MAG or the Ministry of Public Health (MSP), or both, depending on the

product. The MAG authorization requires several internal approvals. Ecuador's prior authorization system is subject to lobbying by domestic producers seeking to block or impede import competition.

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 registered and authorized. This requirement applies to all imported agricultural products, including products of animal origin that U.S. regulatory agencies do not consider to present a high food safety risk.

Establishment of Registration Requirements

AGROCALIDAD Resolutions 115 of June 2019 (replaced Resolution 217 of September 2016) and 003 of 2016 require registration of foreign establishments that export animals or animal products and products to be fed or applied to animals, respectively. Although Ecuador notified these measures to the WTO, no time was allowed for trading partners to review and provide comments prior to the measures entering into force. These resolutions are problematic for U.S. exporters because some of the information needed to register is proprietary and not customarily required for export to other countries. The United States is in discussions with Ecuador to resolve this. In all cases, AGROCALIDAD reserves the right to request a site inspection with costs covered by the party interested in exporting to Ecuador.

GOVERNMENT PROCUREMENT

Ecuador is 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. Payments can often be delayed without explanation despite provision of goods and services and proper work orders and receipts. Personnel turnover within government entities sometimes requires restarting bidding processes as the new personnel do not want to continue processes for fear of national comptroller audits. The lack of transparency poses a risk that procuring entities will administer a procurement 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 established "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, [Servicio Nacional de Contratación Pública – Ecuador – Sercop](#). Foreign bidders must have a local legal representative in order to participate in government procurement. To sell goods or services to Petroamazonas or Petroecuador, foreign bidders must register with each entity to become official suppliers.

Ecuador is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Agreement on Government Procurement since June 2019.

INTELLECTUAL PROPERTY PROTECTION

Ecuador remained on the Special 301 Watch List in 2019. Enforcement of intellectual property (IP) against widespread counterfeiting and piracy remains weak. La Bahia Market in Guayaquil is on the 2019 Notorious Markets List.

The 2016 Code of the Social Economy of Knowledge, Creativity, and Innovation (COESC), also known as the Ingenuity Code, contains legislation covering multiple intellectual property matters. In 2018, the Ecuadorian National Intellectual Property Service (SENADI) published for public comment draft regulations related to the COESC. Those draft regulations are expected to be finalized in mid-2020. Although the draft regulations would address some industry concerns, U.S. stakeholders continue to note more broadly that the COESC legislation could negatively affect intellectual property protections and foreign investment in Ecuador. SENADI is considering amendments to the COESC and as of early 2020 had begun to solicit feedback from stakeholders on requested changes.

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

SERVICES BARRIERS

Telecommunications Services

Article 34 of Ecuador's Organic Telecommunications Law requires telecommunications and subscription television service suppliers with at least a 30 percent market share to pay 0.5 percent of their gross revenue to the government and an additional 1 percent of their gross revenue for each additional 5 percent market share they hold above 30 percent. However, Corporación Nacional de Telecomunicaciones (CNT), which is owned by the government, is not included in the calculation of market share and is exempt from the fees. CNT is the dominant provider of fixed telecommunications services and is the second largest supplier of subscription television services. 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 current government, which took office in May 2017, has said it intends to address these concerns.

Limits on Foreign Equity Participation

There are no limits on foreign equity participation, with the exception of foreign government participation in a "mixed company." Under Ecuadorian law, the Government of Ecuador must hold at least 51 percent of the total outstanding voting interests in an entity that has been designated a mixed company. Foreign investors may own no more than 49 percent of the interests in such companies.

Withdrawal from Bilateral Investment Treaties

On May 3, 2017, Ecuador's National Assembly voted to terminate 12 of the country's Bilateral Investment Treaties (BITs), including its BIT 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 the Ecuadorian government and foreign individuals or private companies. The United States–Ecuador BIT terminated on May 18, 2018, although the sunset provisions of the U.S. agreement will protect investors with investments predating May 18, 2018 for 10 years following the date of termination.

Other Investment Barriers

Regulations and laws since 2007 limit private sector participation by foreign or domestic sources in sectors deemed “strategic.” These apply additional limitations to foreign private sector participation in select sectors such as the extractive industries. In 2010, then-President Rafael Correa enacted Executive Decree 546, which mandated the modification of existing production sharing contracts with oil companies into service provision contracts (fixed price per barrel). Additionally, the decree limited the conditions under which state-owned upstream oil company Petroamazonas or its subsidiaries could employ contractual forms other than service provision contracts. Unlike production sharing contracts, the payment structure of service provision contracts does not provide the same level of incentives for private companies to invest in activities that increase production.

After the fall in global oil prices in mid-2014, the Ecuadorian government began relaxing its extractive industries regulatory framework to attract foreign investment in the petroleum and mining sectors. In July 2018, the government issued Presidential Decree 449, which allowed Petroamazonas to issue production sharing contracts, with certain limitations. The government signed contracts for seven blocks under this model (Ronda Intracampos I) in May 2019, and plans to auction additional blocks in successive rounds (Ronda Intracampos II, Suroriente, Subandino, and one offshore). While this reform attracted exploration and production investment, Decree 546 still prohibits the use of production sharing contracts for existing wells, which limits private sector participation in the bidding process for such wells.

According to industry executives, prohibitions on commingling (mixing of petroleum from multiple companies in a pipeline for transport) in Ecuador’s petroleum sector limits the productive capacity of oil companies by roughly 10 percent, inhibiting investment. A restrictive environmental permitting process requires six months or more for oil projects and an average of 18 months for mining projects. The Environment Ministry has reformed regulations to streamline the process, but the changes will take several months to implement.

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

Ecuador’s National Assembly approved a public-private partnership law on December 15, 2015, intended to attract investment. The law allows increased private participation in some sectors and offers incentives, including the reduction of income tax, VAT, and capital exit tax for investors in certain types of projects. There may be room for further improvement, as no U.S. firms have signed a public-private partnership agreement with the Ecuadorian government since passage of the law.

OTHER BARRIERS

Many U.S. firms and citizens have expressed concerns that corruption among government officials and the judiciary can be a hindrance to successful investment in Ecuador. The current Ecuadorian administration has made anti-corruption efforts a priority. In addition, Electronic Commerce companies have noted that laws and regulations governing their industry are at times not clear or do not give legal certainty to host operations in Ecuador.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was \$2.3 billion in 2019, a 9.3 percent decrease (\$238 million) over 2018. U.S. goods exports to Egypt were \$5.5 billion, up 8.6 percent (\$435 million) from the previous year. Corresponding U.S. imports from Egypt were \$3.2 billion, up 27.1 percent. Egypt was the United States' 43rd largest goods export market in 2019.

Sales of services in Egypt by majority U.S.-owned affiliates were \$1.1 billion in 2017 (latest data available), while sales of services in the United States by majority Egypt-owned firms were \$3 million.

U.S. foreign direct investment (FDI) in Egypt (stock) was \$8.4 billion in 2018, a 10.4 percent decrease from 2017.

IMPORT POLICIES

Tariffs

Egypt's average Most Favored Nation (MFN) applied tariff rate was 19.1 percent in 2018 (latest data available). Egypt's average MFN applied tariff rate was 63.0 percent for agricultural products and 11.8 percent for non-agricultural products in 2018. Egypt has bound 99 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 36.6 percent.

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

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

Nontariff Barriers

Import Licensing

On February 18, 2019, Egypt's Prime Minister issued Decree 412/2019 establishing the Executive Regulations for the National Food Safety Authority (NFSA), created under Law 1/2017 in January 2017. The NFSA must register and approve all nutritional supplements, specialty foods, and dietary foods according to NFSA Decision 1/2018 on the Rules Governing the Registration and Handling of Foods for Special Dietary Uses. Importers must apply for a license to import specialty food products and renew the

license every five years, at a cost of up to \$1,000 per renewal, depending on the product. While there is no law that prohibits the importation of nutritional supplements in finished pill form, the government does not issue import licenses for these products.

On August 25, 2019, Egypt's Parliament passed Law 151/2019 establishing the Egyptian Drug Authority (EDA), which will fall under the Prime Minister's Office and will be responsible for the registration, licensing, and procedures for importing pharmaceutical products, medical devices, and cosmetics. Until the Executive Regulations of the EDA are finalized, the Ministry of Health and Population (MoHP) will continue to carry out those functions. The MoHP approval process for the importation of new, used, and refurbished medical equipment and supplies consists of a number of steps, which some importers have found burdensome. Importers must submit a form requesting the MoHP's approval to import, provide a safety certificate issued by health authorities in the country of origin such as the U.S. Food and Drug Administration (FDA), and submit a certificate of approval from the U.S. FDA or the European Bureau of Standards. The importer also must present an original certificate from the manufacturer indicating the production year of the equipment and, if applicable, certifying that the equipment is new. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

Customs Barriers and Trade Facilitation

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

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 have declined by 60 percent since 2015. Since June 2014, Egypt has applied EU regional emissions and safety standards for vehicles and automotive parts. This has made it difficult to export U.S. vehicles and parts built to comply with U.S. regulations to the Egyptian market. 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. vehicle and automotive parts exports by encouraging Egypt to accept U.S. emissions and safety standards for vehicles. After persistent engagement by the United States, in April 2019 Egypt indicated that it is willing to allow imports of U.S. vehicles and automotive parts if Egypt can overcome its legal and standards concerns. The U.S. Government is providing technical assistance to assist Egypt in working through its legal standards concerns.

Foreign Manufacturers Registration

Egyptian Decree 43/2016, in effect since March 16, 2016, requires foreign entities that export finished consumer products to Egypt, *e.g.*, dairy products, furniture, fruits, textiles, confectioneries, and home appliances, to register their trademarks and their manufacturing facilities with Egypt's General Organization for Exports and Imports Control (GOEIC). Egypt does not allow imports of goods from nonregistered entities. Registration can take several months, adding costs and uncertainty to the export process and, over time, may discourage exports to Egypt. The United States has raised these concerns with Egypt multiple times, most recently at the April 2019 TIFA meeting in Washington, DC.

Ban on Poultry Parts and Poultry Offal

Since 2003, Egypt has imported poultry from all origins, but has only permitted imports of whole, frozen birds, banning imports of poultry parts and offal. Although Egypt's General Organization for Veterinary Services (GOVS) inspected and approved 22 U.S. poultry establishments for export to Egypt in September 2013, and certified that U.S. slaughtering processes and food safety measures are in accordance with halal practices, Egypt does not issue import licenses for U.S. poultry parts and poultry offal. The United States raised these issues at the TIFA meetings in December 2017, May 2018, and April 2019. The halal issue was raised during the WTO Technical Barriers to Trade Committee meeting in 2018. In September 2019, GOVS issued a suspension of all imports of poultry and poultry products.

Sanitary and Phytosanitary Barriers

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

Agricultural Biotechnology

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

Seed Potatoes

The United States remains unable to export seed potatoes to Egypt because the Ministry of Agriculture's Central Administration for Plant Quarantine (CAPQ) has failed to provide the United States with an official designation of approved origin for exporting seed potatoes. According to the Ministry of Agriculture's regulations, CAPQ approves origins only after completing a pest risk analysis. While the pest risk analysis for U.S. seed potatoes was completed in 2018, Egypt continues to delay approval of the United States as an origin for exporting seed potatoes to Egypt.

GOVERNMENT PROCUREMENT

In July 2018, the Egyptian Parliament passed a new law on government procurement (No. 182), which requires procurement decisions be made in a competitive and transparent manner and meet not only technical factors and price, but also sustainable development goals. As with the prior procurement law,

Egyptian small and medium-sized enterprises are given the right to obtain up to 20 percent of available government contracts annually.

Egypt is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Egypt remained on the Watch List in the 2019 Special 301 Report. While Egypt has taken steps to improve intellectual property (IP) rights enforcement, concerns remain with the widespread use of pirated and counterfeit goods, including software, music, unlicensed satellite TV broadcasts, and videos. Deterrent-level penalties for IP violations, *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border, and additional training for enforcement officials would enhance the IP enforcement regime in Egypt. Also, the lack of transparent and reliable systems for processing trademark and patent applications remains an obstacle for growth of U.S. IP exports. During consultations in September and November 2019, the United States, among other things, urged Egypt to address transparency concerns and to clarify its protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

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

Express Delivery Services

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

Financial Services

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

Telecommunications Services

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

BARRIERS TO DIGITAL TRADE

Egypt's 2018 Law Regulating the Press, Media, and the Supreme Council for Media Regulation (SCMR) requires media outlets to pay a fee of 50,000 Egyptian pounds (approximately \$2,800) to obtain a license from the SCMR and gain legal status. The law defines "media outlet" very broadly, to include any social media account with at least 5,000 subscribers. Such licensing requirements undermine the value of social media services, including those supplied by U.S. firms. The Egyptian government has used this and other laws as grounds to further increase widespread website blocking. Website blocking undermines the value of Internet-based services to their customers and imposes costs on local firms that depend on these services for their business.

INVESTMENT BARRIERS

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

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was \$899 million in 2019, a 1.3 percent increase (\$11 million) over 2018. U.S. goods exports to El Salvador were \$3.4 billion, down 0.6 percent (\$20 million) from the previous year. Corresponding U.S. imports from El Salvador were \$2.5 billion, down 1.2 percent. El Salvador was the United States' 50th largest goods export market in 2019.

U.S. exports of services to El Salvador were an estimated \$1.3 billion in 2018 (latest data available) and U.S. imports were \$724 million. Sales of services in El Salvador by majority U.S.-owned affiliates were \$1.3 billion in 2017 (latest data available).

U.S. foreign direct investment (FDI) in El Salvador (stock) was \$3.3 billion in 2018, a 7.9 percent increase from 2017.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs and Taxes

Tariffs

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

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

Taxes

El Salvador, under its general alcoholic beverage law, assesses a specific excise tax on distilled spirits that is applied on a per-liter of alcohol basis, with four specific rates (\$0.0325, \$0.05, \$0.09, and \$0.16 per liter as of 2020). 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. Seemingly arbitrary breakpoints based on the type of distilled spirit or tariff classification may result in a significantly lower tax rate on locally-produced spirits.

Nontariff Barriers

Customs Barriers and Trade Facilitation

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

El Salvador has not yet notified its customs valuation legislation to the World Trade Organization (WTO), and has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

In 2013, the Salvadoran customs authority implemented nonintrusive inspections with x-rays at border crossings. These inspections have resulted in detection of anomalies, ranging from the trafficking of narcotics to the false declarations of goods. At the same time, while designed to facilitate cross-border movements, the procedures have resulted in considerable delays that cause financial losses to exporters and importers. In 2018, the Legislative Assembly approved reforms to the Special Law on Customs Infractions to introduce a five percent margin of tolerance for quality, weight, volume, or value discrepancies of imports. The amendment also eliminates fines if the importer accepts and corrects any tax omissions. The private sector Inter-union Commission for Trade Facilitation (Cifacil) has been promoting the implementation of measures to streamline trade. In July 2019, Salvadoran trade and customs officials met with Cifacil to relaunch the National Trade Facilitation Committee (NTFC), which had not met since its creation in 2017. In October 2019, the NTFC presented the first jointly-developed public-private action plan to facilitate trade. The plan contains 60 strategic measures focused on simplifying procedures, reducing trade costs, improving road connectivity and border infrastructure, as well as strengthening institutions. The NTFC plans to implement the measures during 2020.

In July 2018, El Salvador's Legislative Assembly approved the country's incorporation into the Customs Union established by Guatemala and Honduras in June 2017. El Salvador is in the operational phase, which includes working to harmonize regulations and procedures, integrate border posts, establish interconnectivity between automated systems, and train customs officials on the new procedures. Technical-level working groups continue to meet, though the Salvadoran administration announced in January 2020 that it would prioritize bilateral trade facilitation with Guatemala.

Private companies frequently express concerns regarding the inconsistent and discretionary application of customs regulations and procedures, resulting in unpredictable delays and administrative fines. In 2015, El Salvador's Legislative Assembly approved amendments to the Customs Simplification Law, which included imposing an \$18 per-shipment processing fee for incoming packages and cargo. In response to

industry concerns, in 2018, the Legislative Assembly approved an amendment to allow an “accumulated merchandise declaration” to allow imports and exports of up to 25 samples in a single declaration and pay \$18 for a single non-intrusive inspection. Despite the amendment, the private sector continues to express concerns about Customs’ implementation of procedures related to the import of samples. The United States continues to monitor implementation and offer technical assistance.

Salvadoran reforms enacted in 2018 introduced a 24-hour timeframe to conduct non-intrusive inspections and reduce the previous statutorily mandated time to clear goods through customs from 48 to 24 hours. The amendments also reduce the statutory time limit for the administrative procedures to determine duties and taxes from 20 days to 12 days, eight days to issue a final resolution and four days to notify parties.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

El Salvador requires a Certificate of Free-Sale to register food products. The Ministry of Health has agreed to accept the Food Safety Inspection Service (FSIS) 9060-5 certificate for meat and meat products in lieu of the Certificate of Free-Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate, a health certificate for U.S. meat and meat products. Obtaining the health certificate for the purpose of food product registration is problematic as this document only accompanies actual shipments of meat or processed meat products. These shipments cannot occur until the food product is registered. Under the CAFTA-DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, which may make the health certificate requirement unnecessary or duplicative for U.S. exports.

In 2015, El Salvador issued the implementing regulation for the Act for the Promotion, Protection and Support of Breast Feeding, which defines requirements for sanitary registration, restricts marketing and advertising, and sets out labeling requirements for breast milk substitutes. This regulation was published and entered into force in 2015, without notification to the WTO, and lacks clarity as to what information must appear on the label. At least one U.S. company doing business in El Salvador expressed concerns about the regulation and the Ministry of Health’s proposed implementation prior to the June 2019 change in government. As of March 2020, the Ministry of Health has not yet acted to implement this regulation. The United States continues to monitor the implementation of the regulation and has requested El Salvador notify it to the WTO Technical Barriers to Trade Committee to allow WTO Members a comment period and reasonable interval for implementation.

Sanitary and Phytosanitary Barriers

Since 2015, animal product exporting facilities are subject to MAG inspection and certification every three years. As the CAFTA-DR provides equivalence for the U.S. beef, pork, and poultry inspection systems, the inspection and certification requirements only apply to U.S. animal products not covered by the equivalence agreement such as pet food and pet food additives or probiotics. After several extensions, MAG began applying this measure to imports in 2017. In 2018, MAG began accepting the National Oceanic and Atmospheric Administration Seafood Inspection Program certificates for grown and raised U.S. seafood, but not for products sourced from foreign locations. The U.S. Government will continue discussions with MAG to allow imports of all U.S. products based on broader recognition of U.S. inspection programs, rather than requiring plant-by-plant inspection.

El Salvador does not distinguish between low- and high-risk products. Therefore, extensive laboratory tests are mandatory for all new food products, even for those low-risk products that would be permitted into other markets without testing. These testing requirements also apply to samples. To register product

samples, the Ministry of Health requires large quantities of the product for testing, including samples of each different flavor of the same product. In 2017, the Ministry of Health notified companies that laboratory testing must be conducted at the Ministry's laboratory, creating a backlog in processing new product registrations and renewals. In July 2019, in response to the backlog and requests from the private sector, the Ministry of Health issued a decree to allow testing to be carried out at certified private laboratories during vacation periods in El Salvador. The Ministry agreed to review laboratory testing requirements to determine to what extent additional flexibility would be permissible under the existing Health Code.

SUBSIDIES

Export Subsidies

El Salvador instituted a Free Trade Zone Law in 2013, which grants tax credits based on the number of workers employed and investment levels.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods).

GOVERNMENT PROCUREMENT

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

El Salvador is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

To implement its CAFTA-DR obligations for intellectual property rights, El Salvador undertook legislative reforms providing for stronger IP protection and enforcement. However, several concerns remain, including trafficking in counterfeit products, music and video piracy, the unlicensed use of software, as well as cable and satellite signal piracy. The United States remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval 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 continues to engage El Salvador to ensure protections for geographic indications 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 IP obligations under the CAFTA-DR.

OTHER BARRIERS

Bribery and Corruption

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in El Salvador. Administrative and judicial

decision-making appear at times to be inconsistent, nontransparent, and time-consuming. Bureaucratic requirements reportedly have at times been excessive and unnecessarily complex with significant variation in their application and interpretation. The CAFTA-DR contains strong public sector anti-bribery commitments and anticorruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

Companies have expressed concern about the approval of laws and regulations without following required notice and comment procedures. The Regulatory Improvement Law requires government agencies to publish online the list of laws and regulations they plan to enact, reform or repeal each year. Prior to adopting or amending laws or regulations, the Simplified Administrative Procedures Law requires a regulatory impact analysis. Proposed legislation and regulations, as well as regulatory impact analyses must be made available for public comment. The Legislative Assembly does not publish draft legislation on its website and does not have a standardized means of soliciting comments on pending legislation. By law, beginning in April 2019, all government agencies are required to publish proposed regulations for comment. However, this requirement has not yet been fully implemented.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was \$449 million in 2019, a 48.0 percent decrease (\$415 million) over 2018. U.S. goods exports to Ethiopia were \$1.0 billion, down 22.0 percent (\$287 million) from the previous year. Corresponding U.S. imports from Ethiopia were \$572 million, up 28.7 percent. Ethiopia was the United States' 78th largest goods export market in 2019.

TRADE AGREEMENTS

Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA), a regional economic bloc which has 21 member countries. As part of its COMESA membership, Ethiopia has introduced a 10 percent tariff reduction on goods imported from member states. However, Ethiopia has not yet joined the COMESA free trade area. Ethiopia signed the African Continental Free Trade Agreement (AfCFTA), which entered into force on May 30, 2019, and will become operational on July 1, 2020. Ethiopia is not a member of the World Trade Organization (WTO).

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ethiopia's average Most Favored Nation (MFN) applied tariff rate is 17.4 percent. Ethiopia's MFN applied tariff rate averaged 22.1 percent for agricultural products and 16.6 percent for non-agricultural products in 2018 (latest data available). High tariffs insulate priority sectors of the economy, such as textiles and leather, from outside competition and limit U.S. participation in the market.

Taxes

Imports into Ethiopia are subject to an excise tax, surtaxes, and a 15 percent value-added tax (VAT). Excise taxes are levied on selected domestically produced and imported goods, and range from 10 percent for textiles and most other goods, to as high as 100 percent for alcoholic beverages. A VAT is imposed on most imported items, however some products and services are exempted from VAT. These exempted areas consist of financial services, educational services, healthcare, and transportation services. All goods imported into the country are subject to a 10 percent surtax, with the exception of fertilizer, petroleum, investment goods, raw materials, and some medicines.

Nontariff Barriers

The Ministry of Trade and Industry has the power to restrict and/or limit imports and exports. There are restrictions on the importation of used clothing; arms and ammunitions (except by the Ministry of Defense); and goods of a commercial nature and quantity that are not imported through formal bank payment mechanisms.

Import Licensing

Ethiopia maintains a complex import licensing regime that is administered by eight different ministries and administrative units of the Ethiopian government. In addition to receiving a license, importers must also

obtain an import registration number, import business license, and a commercial bank permit before bringing products into the country. Obtaining a commercial bank permit is a burdensome process, which includes obtaining a letter of credit for the total value of an import transaction and applying for an import permit before an order can be placed. Moreover, even with a letter of credit, import permits are not always granted, and there are delays for several months before an importer is allocated foreign exchange.

Customs Barriers and Trade Facilitation

Logistics backlogs occur regularly, in part because the customs process remains paper-based and inefficient. Furthermore, monopolistic market conditions and inadequate infrastructure inhibit private sector logistics companies. Private sector contacts reported that logistics costs comprise approximately 22 to 27 percent of final costs for many products. Other contacts allege that shipping and freight costs are approximately 60 percent higher than in neighboring countries. Customs policy and administrative challenges are amplified by the fact that upwards of 90 percent of land-locked Ethiopia's foreign trade passes through a single port in neighboring Djibouti, which has incomplete infrastructure and its own inefficient customs procedures. Under the framework of a comprehensive logistics strategy, the federal government has slated the logistics sector for liberalization; draft legislation would allow up to 75 percent ownership by foreign logistics companies, the government is actively seeking to develop alternative transport corridors to additional ports in Eritrea and Somaliland, and the state-owned logistics monopoly is slated for eventual privatization.

Foreign Exchange Controls

The Central Bank of Ethiopia (known locally as the National Bank of Ethiopia, or NBE) administers a strict foreign currency control regime, and the local currency (the Ethiopian birr) is not freely convertible. All imports, exports, and outgoing foreign payments require a foreign exchange permit. Ethiopian commercial banks are licensed to issue these permits, except for purchases of coffee. Private banks are required to manage their foreign exchange transactions through correspondent banks. The central bank carefully monitors the foreign exchange holdings of these banks and closely manages the exchange rate. For the past six years, the central bank has allowed five to six percent depreciation of the domestic currency per year. The central bank unexpectedly devalued the domestic currency by 15 percent in early October 2017, following a serious foreign currency shortage. The central bank has allowed exporters, foreign investors, and domestic investors that generate foreign currency to acquire external loans and suppliers' credit upon prior registration and approval by the bank. Larger private firms, state-owned enterprises, and businesses that import goods prioritized by the government's development plan, manufacturers in prioritized export sectors (e.g., textiles, leather, and agro-processing), and importers of emergency food generally have priority access to foreign exchange. In comparison, investors in non-priority sectors and less well-connected importers—particularly smaller, new-to-market firms—face long delays in arranging trade-related payments. On occasion, they may never be allocated foreign currency. The unreliability of foreign currency supply in Ethiopia's banks hampers the ability of all manufacturers (including those in prioritized sectors) to import, and restricts repatriation of profits.

SANITARY AND PHYTOSANITARY BARRIERS

In August 2015, an amendment to the Biosafety Proclamation established a legal framework to support the cultivation of genetically engineered crops. The government subsequently revised the proclamation's implementing directives to specify requirements for introducing genetically engineered (GE) cotton, and conducted successful field trials. In May 2018, the Ethiopian Ministry of Environment approved Bt cotton—the country's first GE crop—for commercial cultivation. In 2019 Ethiopian farmers planted approximately 130 hectares of GE Cotton. According to industry sources there was greater demand, but it was impossible to import enough seed due to foreign currency constraints. At the same time, the

Environment Ministry authorized confined field trials for drought-tolerant and insect-resistant maize. The Ethiopian government is currently carrying out the second round of Bt maize field trials. Meanwhile, stakeholders have reported that the approval process for commercial imports of GE grains and oilseeds for food and feed remains overly burdensome. Imports of processed food products, including soybean and corn oils, and breakfast cereals made from GE ingredients are subject to mandatory labelling requirements. Food aid shipments that may contain GE ingredients are exempted from this requirement.

GOVERNMENT PROCUREMENT

Tender announcements are usually public, but a number of major procurements do not go through a transparent tendering process. Complicated and inadequately established procedures, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections pose obstacles to foreign participation in government procurement. At least one large U.S. company, for instance, has seen a large, multi-million contract with the government abruptly modified with little explanation and no apparent due process. Another obstacle is the frequent requirement for potential suppliers to appear in-person to collect solicitation packages, which business associations complain creates an advantage for state-owned enterprises. U.S. firms have expressed concerns about the failure of procurement agencies to respect tender terms. However, at least one U.S. firm has successfully utilized the government appeals process to reverse an unfair tendering decision. Further, several dozen government procurement officials, across a variety of government agencies, have been arrested for corruption as part of a broader reform effort.

Ethiopia is not a WTO Member, and therefore is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property (IP) protection and enforcement remain a serious concern in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization and has demonstrated an interest in strengthening its IP regime. However, as mentioned above, it is not a WTO Member and therefore is not a Member of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Ethiopia also has not joined other significant IP treaties. Trademark infringement, especially in the hospitality and retail sectors, continues to be concerning. Given the lack of enforcement capacity and coordination among Ethiopian government agencies, IP enforcement is unpredictable. The Ethiopian Intellectual Property Office is responsible for the administration and arbitration of IP cases, but action to combat the sale of pirated works remains inadequate. The government of Ethiopia does not publicly track seizures of counterfeit goods, so no statistics are available.

SERVICES BARRIERS

Financial Services

Ethiopia's investment code prohibits foreign investment in the financial service industry, including banking and insurance. In June of 2019, as part of its broader economic reform agenda, Ethiopia passed a bill that allows foreign nationals of Ethiopian origin to invest in the banking and insurance sectors. The banking sector is composed of 16 private commercial banks and two public banks. Financial transactions are predominately in cash. Ethiopia's ATM network has expanded rapidly and has become accessible to customers of all banks and credit card holders, though there are frequent service interruptions due to the unreliable Internet network. In addition, agent-banking services tied to mobile phones have been introduced by several providers, and more than a million users of agent-banking services are registered. Few international banks maintain representative offices, and all trade financing must go through an Ethiopian

bank. This creates significant challenges for foreign investors with offshore accounts. Following the 15 percent devaluation of the Ethiopian birr in 2017, the NBE increased the minimum saving interest rate banks can offer (there is no ceiling) from five to seven percent, and limited the outstanding loan growth rate in commercial banks to 16.5 percent above the previous year. This has had the effect of limiting lending to businesses; while demand for credit growth in Ethiopia remains strong, the limits on credit supply growth hinders the private sector. Moreover, banks are instructed to immediately transfer 30 percent of their foreign exchange inflow to an NBE account for local currency conversion. This hard currency is then used by the government to meet the strategic needs of the country, such as payments made to service external debt and to procure petroleum, fertilizers, or pharmaceuticals.

Insurance Services

As noted above, the domestic insurance and reinsurance industry in Ethiopia is closed to investment by foreign companies and is highly regulated. It is characterized by limited product offerings that mostly focus on automotive insurance. Although reinsurance may be offered on a cross-border basis, Ethiopia requires that a proportion of each reinsurance policy and of treaty reinsurance contracts be ceded to local reinsurance companies.

Telecommunications Services

In June of 2019, the Ethiopian Parliament passed legislation which established an independent telecommunications regulator and opened up the sector to private investment. The government has begun the process, with World Bank support, of performing an asset valuation of the state-owned monopoly provider, EthioTelecom. The government of Ethiopia has announced plans to sell a minority stake in EthioTelecom, auction telecom spectrum to foreign investors, and further liberalize the sector by the spring of 2020. Still, at present, EthioTelecom maintains a monopoly on wired and wireless telecommunications services. It also owns and operates all of the cell phone towers in the country. The current low quality of telecommunications service in Ethiopia impedes business operations across a range of other sectors.

For companies and organizations whose operations are Internet-dependent or located in remote areas of the country, the government allows the use of Very Small Aperture Terminals (VSATs), but it does not allow the general public to use VSATs, which can facilitate satellite-based Internet access in rural or remote regions.

INVESTMENT BARRIERS

A number of formal and informal barriers impede foreign investment in Ethiopia. Investment in defense industry is permitted only in partnership with the Ethiopian government. Foreign investors are required to invest a minimum of \$200,000 per project. For joint investment with a domestic partner, the investment capital minimum is lowered to \$150,000. The banking, insurance, and micro-finance industries are restricted to domestic investors. Foreign investors also are barred from investing in a wide range of retail, wholesale, and service enterprises (*e.g.*, printing, non-specialized restaurants, retail trade and brokerage, transport services, broadcasting, and beauty shops). Some government tenders are open to foreign participation, but the process is not always transparent. For joint ventures with state-owned enterprises, some investors report informal requirements of up to 30 percent domestic content in goods or technology, or both.

All land in Ethiopia belongs to the state; there is no private land ownership and land cannot be collateralized. Land may be leased from local and regional authorities for up to 99 years. However, current land-lease regulations place limits on the duration of construction projects, allow for revaluation of leases at a

government-set benchmark rate, place previously owned land (“old possessions”) under leasehold, and restrict the transfer of leasehold rights.

ANTICOMPETITIVE PRACTICES

State-owned enterprises (SOEs) dominate major sectors of the economy. There is a state monopoly or state dominance in the telecommunications, power, banking, insurance, air transport, and shipping industries. SOEs have considerable advantages over private firms, such as expedited customs clearance processing. Ethiopian business owners and foreign investors complain of the lack of a level playing field when it comes to state-owned businesses. While there are no conclusive reports of credit preference for these entities, there are indications that they receive other benefits such as priority foreign exchange allocation, preferences in government tenders, and marketing assistance. The GOE has begun the process of privatizing many of the remaining SOEs, and plans to start by selling a minority stake in EthioTelecom by the spring of 2020.

OTHER BARRIERS

Bribery and Corruption

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently solicited for bribes to secure business contracts. Both U.S. and other foreign companies complained that they were unfairly targeted for tax collection (compared to local companies) and presented with spurious tax bills. However, in 2018 the government arrested several dozen former military and intelligence officials, charging them with corruption and embezzlement allegedly committed during the procurement contracts for large government contracts.

Judiciary

Companies that operate businesses in Ethiopia assert that the judicial system remains underdeveloped and inadequately staffed, particularly with respect to commercial disputes. While property and contractual rights are recognized, and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters and the scheduling of cases often faces extended delays. Contract enforcement remains weak, though Ethiopian courts will at times reject spurious litigation aimed at contesting legitimate tenders. Ethiopia has not yet ratified key international arbitration agreements such as the New York Convention, though the government has publicly stated that ratification is under consideration. Ethiopia is in the process of reforming the country’s Commercial Code to bring it in line with international best practices. The draft legislation appears to address many concerns raised by the business community, including a proposal to introduce a commercial court under the regular court system to improve resolution of commercial disputes.

EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union (EU) was \$177.9 billion in 2019, a 5.5 percent increase (\$9.2 billion) over 2018. U.S. goods exports to the EU were \$337.0 billion, up 5.9 percent (\$18.6 billion) from the previous year. Corresponding U.S. imports from the EU were \$514.9 billion, up 5.7 percent.

U.S. exports of services to the EU were estimated \$265.6 billion in 2019 and U.S. imports were \$209.8 billion. Sales of services in the EU by majority U.S.-owned affiliates were \$734.5 billion in 2017 (latest data available), while sales of services in the United States by majority EU-owned firms were \$555.2 billion.

U.S. foreign direct investment (FDI) in the EU (stock) was \$3.2 trillion in 2018, a 0.8 percent increase from 2017. U.S. direct investment in the EU is led by nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The United States and the 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 \$5.3 billion per day in 2017 (latest data available), and the total stock of transatlantic investment was \$5.6 trillion in 2017.

U.S. exporters and investors nonetheless face persistent barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. These barriers have contributed to annual U.S. trade deficits with the EU. This report highlights some of the most significant barriers that have endured despite repeated efforts at resolution through bilateral consultations or World Trade Organization (WTO) dispute settlement. Certain barriers have been highlighted in this report for many years.

IMPORT POLICIES

Tariffs

The EU's average Most Favored Nation (MFN) applied tariff rate was 5.2 percent in 2018 (latest data available). The EU's average MFN applied tariff rate was 12 percent for agricultural products and 4.2 percent for non-agricultural products in 2018 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 5.1 percent.

Although the EU's tariffs are generally low for non-agricultural goods, there are some high tariffs that affect U.S. exports, such as rates of up to 26 percent for fish and seafood, 22 percent for trucks, 14 percent for bicycles, 10 percent for passenger vehicles, 10 percent for processed wood products, and 6.5 percent for fertilizers and plastics.

On June 20, 2018, the EU adopted additional tariffs ranging from 10 percent to 25 percent on a range of agricultural products, consumer products, and industrial products and materials imported from the United States in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has urged the EU

to work with the United States to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American farmers, workers, and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on July 16, 2018, the United States launched a dispute settlement proceeding against the EU in the WTO pertaining to the EU's retaliatory tariffs. The WTO panel is expected to issue its ruling by the second half of 2020.

Nontariff Barriers

Non-Agriculture

Member State Measures: Pharmaceutical Products

U.S. pharmaceutical stakeholders have expressed concerns regarding several Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, such as therapeutic reference pricing and price controls. Such lack of transparency and due process reportedly creates 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 as described below. One example is the “clawback system” which requires pharmaceutical companies to pay back a certain percentage of the amount spent by Member States over budgetary limits. Stakeholders have also expressed concerns over inconsistent and lengthy time limits for pricing and reimbursement decisions. Industry has grown increasingly concerned about policies that are being made with little opportunity for engagement. Moreover, 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, are also of concern to stakeholders. The United States continues to engage with the EU and individual Member States on these matters.

Austria: U.S. pharmaceutical exports to Austria were worth over \$1.08 billion in 2018 (latest data available), comprising over 20 percent of U.S. goods exports to the country. Nonetheless, U.S. pharmaceutical companies continue to express concern regarding reimbursement pricing decisions that are not transparent and fail to provide sufficient incentives for innovation. The ongoing reorganization of the statutory social insurance carrier structure has added uncertainty, and it is unclear how the changes will impact reimbursement policies. Industry expresses concerns about lack of engagement over such policies.

Belgium: U.S. companies identified several policies affecting market access, including a turnover tax, a crisis tax, a marketing tax, and a clawback tax. The United States continues to highlight the need for a continued dialogue with the government to address the above as well as meaningful opportunities for stakeholder input into budget and pricing decisions with the aim of safeguarding the access to the best treatment, including new innovative medicines, for Belgian patients.

Czech Republic: U.S. firms have expressed concerns about the Czech Republic's non-transparent system for determining pricing and reimbursement levels for pharmaceutical products, as well as lengthy approval delays. Specifically, they raise questions regarding the Czech government's practice of using the three lowest prices in a basket of countries to set maximum medicine prices. The United States encourages these pricing decisions to be made transparently and to include meaningful stakeholder input and will continue to engage with 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. U.S. stakeholders have expressed concern that the process of gaining

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. The French government announced that it would reduce the length of the delays and meet the 180-day timeline by 2022, but it has yet to implement any major adjustments.

Greece: Pharmaceutical industry stakeholders face price controls and policies such as clawbacks and rebates which create a challenging business environment. In 2020, the Ministry of Health acknowledged that the clawback is currently too high and plans to reduce it with the intent to eliminate it completely by 2022. U.S. pharmaceutical companies are in contact with the Greek government and hope to address these issues in the short term.

Hungary: Pharmaceutical industry stakeholders express concern that the Hungarian government's pricing and reimbursement policies, which include a clawback system, extended delays in decision-making and reimbursement, and lengthy processes to make changes to the list of drugs approved for reimbursement, cause considerable unpredictability in the Hungarian market. Industry notes the lack of stakeholder input from the pharmaceutical sector.

Italy: U.S. healthcare companies face an unpredictable business environment in Italy, which includes a highly variable implementation of complex pricing and reimbursement policies, including a clawback system. The pharmaceutical companies pay back the clawback amount to the Italian Drug Agency (AIFA), which is 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 continues to press the Italian government to address these issues.

Moreover, an Italian law (D.L. 78/2015) applies the clawback 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 agreements. 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.

In addition, AIFA utilizes a system of therapeutic tenders that requires patented medicines to compete against other patented medicines and generics with different active ingredients. U.S. industry has expressed concern that price appears to be the only selection criteria.

U.S. stakeholders also have raised concerns regarding delays in market approval for pharmaceutical products and payments for medical devices, noting that it can take up to 12 months for products to be included in the Regional Registry even after the products have received marketing approval and been accepted for reimbursement. The average payment time from public hospitals to medical devices suppliers in Italy continues to exceed the EU average as well as the maximum period permitted by EU law.

Ireland: Pharmaceutical industry stakeholders expressed concerns over the Irish government's cost containment measures and delays in reimbursement decisions. Access to new drugs and medicines, some of which are produced in Ireland, may be subject to a lengthy decision process as well as unpredictable funding levels. Industry also notes concerns over Ireland's price freezes on reimbursed medicines since 2016.

Lithuania: The United States continues to engage with the Lithuanian government regarding pharmaceutical market access issues. In addition, discussions between the Lithuanian 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 opportunity for meaningful stakeholder input into rulemaking as well as regarding the tendering processes and the transparency of reimbursement rules for pharmaceutical products. U.S. industry reports that Poland's pricing and reimbursement system is backlogged, taking more than 630 days on average from regulatory approval to patient access. Private hospital owners have complained that the hospital network law enacted in 2017 makes it difficult to get reimbursed by the National Health Fund for lifesaving procedures, forcing the closure of some private hospitals, particularly in cardiology. Poland is in the process of drafting a new medical reimbursement law that is still in the consultation stage and carries the potential to bring about major changes to Poland's reimbursement system. The United States will continue to urge Poland to engage meaningfully with stakeholders to address their concerns.

Portugal: Multiple U.S. pharmaceutical companies have expressed concern about delays in payments for medicine from public hospitals that at times far exceed the legal 90-day payment period and can last up to 400 days. In addition, the companies face delays in approvals for the introduction of innovative products, with the average approval taking two years. The companies linked the payment and approval delays to budgetary constraints on the national health care system and noted they affected domestic firms as well. In 2019, INFARMED, the Portuguese Health Technologies Assessment body, proposed new rules for the evaluation of reimbursable medicines. The pharmaceutical industry views these rules as overly complex and likely to aggravate existing delays in the approval of new medicines. The United States has been working with U.S. pharmaceutical representatives to raise these issues with the Portuguese government.

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 37 new innovative drugs to the reimbursement list in 2018 and 19 in 2019. Numerous applications remain pending, severely undermining the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House does not reimburse patients for drugs that are not included on the reimbursement list. In addition, both innovative and generic pharmaceutical companies have withdrawn drugs from the Romanian market, as the low official prices set in Romania can fall below production costs. Other barriers include a government policy of not considering reimbursement applications until a new innovative medicine has been granted reimbursement in at least 14 EU countries.

A clawback tax, which reached the equivalent of 25.2 percent of total gross sales during the second quarter of 2019, is another major challenge for U.S. stakeholders. U.S. stakeholders continue to raise concerns regarding a lack of transparency, particularly in pricing and the clawback system, which the Romanian government is reviewing.

Spain: Pharmaceutical industry stakeholders note concerns as to cost containing measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, price cuts, imposition of mandatory discounts, and uneven patient access across autonomous regions.

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 were capped based on the average of the three lowest prices within the EU, which incentivized third parties to re-export pharmaceuticals to other EU markets, where they were sold at a profit, leading to shortages of certain drugs in Slovakia. In 2017, Slovakia amended its law allowing the Slovak State Institute for Drug

Control to monitor and ban the re-export of certain pharmaceutical products. Under the amended law, only the rights holder or distributor can legally export categorized medicines (*i.e.*, medications that are fully or partially covered by health insurance) outside Slovakia.

Uranium

The EU's policies under the 1994 Corfu Declaration, a joint European Council and European Commission (the Commission) policy statement, restrict the importation into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. The Corfu Declaration has never been made public or notified to the WTO. The United States has conveyed to the Commission its concerns about the application of the Corfu Declaration.

Transfer pricing

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 Organization for Economic Cooperation and Development (OECD)/G20 Base Erosion and Profit Shifting project.

Agriculture

Bananas

In June 2010, the United States and the EU signed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign banana distributors and to maintain a nondiscriminatory, tariff-only regime for the importation of bananas. The United States-European Union agreement complements a parallel agreement, the Geneva Agreement on Trade in Bananas (GATB), between the EU and several Latin American banana-supplying countries (also signed in June 2010), which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations.

The agreements marked the beginning of a process that, when completed, will culminate in the resolution of all of the various banana disputes and claims against the EU in the WTO. The GATB entered into force on May 1, 2012, and certification by the WTO of the EU's new tariffs on bananas was completed on October 27, 2012. On November 8, 2012, the EU and the Latin American signatories to the GATB announced that they had settled their disputes and claims related to bananas. On January 24, 2013, the U.S.-EU bananas agreement entered into force.

U.S. stakeholders have expressed concerns about actions taken by Italian customs authorities since 2013, and related decisions taken by Italian courts, challenging the use of certain EU banana import licenses under pre-2006 EU regulations. The United States has pressed the Commission to clarify its position on this matter.

Meursing Table Tariff Codes

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

Subsidies for Fruit and Vegetables

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy (CAP), including for measures related to the promotion of fruit and vegetables. Implementing rules covering fresh and processed products are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives. In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

Customs Barriers and Trade Facilitation

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there are separate agencies responsible for the administration of EU customs law in each of the 28 Member States. It is thus difficult for the EU to ensure that its 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. However, EU rules do not require the customs agency in one Member State to automatically follow the decisions of the customs agency in another Member State with respect to materially identical issues. In some cases, where the customs agency of a Member State administers EU law differently, or disagrees with the Binding Tariff Information issued by another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State, and the rules regarding these reviews vary from Member State to Member State. A trader

encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the Court of Justice of the European Union (CJEU). Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO Dispute Settlement Body (DSB).

The Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed. Member States continue to use different data templates. In 2019, the expected completion date for full implementation of harmonized customs data systems was extended from the end of 2020 to the end of 2025.

The United States will continue to monitor the UCC implementation process, focusing on its impact on the consistency of customs treatment under EU customs law.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Transparency and Notification

The United States faces a proliferation of technical barriers to trade in the EU. This is attributable in part to the EU's process for preparing and adopting post-legislation "implementing and delegated acts." These processes lack clarity and efficacy with respect to ensuring that technical regulations, guides, or recommendations within the scope of the WTO Agreement on Technical Barriers to Trade (TBT) are properly notified to the public. The United States regularly raises concerns, both in bilateral engagement and in the WTO TBT Committee, in cases where notification of certain measures that may have a significant effect on trade have not taken place at an appropriate stage, when amendments can still be introduced and comments may be taken substantively into account, and when less trade-restrictive alternatives can be considered. 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.

For example, under the EU's regulatory processes for Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and Classification and Labeling (CLP), the controls on products are typically notified after scientific review committees have convened. This prevents affected parties from providing additional scientific or technical data (as was the case with labeling requirements for titanium dioxide and cobalt). In other cases, measures are simply not notified at all, as was the case with a series of country of origin labeling (COOL) measures. In the case of the EU Regulation on Eco-Design Requirements for Electronic Displays, substantive changes were made to the draft regulation after the public consultation and WTO notification, meaning that stakeholders did not have an opportunity to comment on those changes. Improvement and greater consistency in EU notification of measures, particularly implementing and delegated acts that may have a significant effect on trade, could reduce the emergence of technical barriers to trade by ensuring that the EU takes into consideration significant concerns before it finalizes measures.

European Standardization and Conformity Assessment Procedures

The EU's approach to standards-related measures, including its conformity assessment framework, and its efforts to encourage governments around the world to adopt its approach, including European regional standards, creates a challenging environment for U.S. exporters. In particular, the EU's approach impedes market access for products that conform to international standards as opposed to European regional standards (called European harmonized standards or ENs), even though international standards may meet or exceed the EU (or third country) regulatory requirements. U.S. producers and exporters thus face additional burdens in accessing the EU market 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. The "New Approach" was updated in 2008 and rebranded as the "New Legislative Framework" (NLF). The NLF represents a package of measures meant to clarify EU product marking requirements, establish a common legal framework for industrial products, and improve product safety, often through the involvement of market surveillance authorities. Product requirements in a variety of sectors (*e.g.*, toys, machinery, medical devices) are regulated through NLF legislation. Under the NLF, EU legislation sets out the "essential requirements" that products must meet in order to be placed in the EU market and benefit from free movement within the EU. Products that conform to harmonized ENs (HENs) under the NLF are presumed to be in conformity with the essential requirements. Moreover, an EN must be implemented at the national level by a Member State, including through the withdrawal of any conflicting national standard. HENs, however, can only be developed through the European Standards Organizations (ESOs) as directed by the European Commission through a standardization request. The ESOs include: European Committee for Standardization (CEN), European Committee for Electrotechnical Standardization (CENELEC), and European Telecommunications Standards Institute (ETSI). These products can bear what is known as a "CE mark" and can be sold throughout the EU.

While the NLF does not explicitly prohibit other standards from being used to meet the EU's essential requirements, the practical effect of the EU system discourages the use of other standards. Specifically, the costs and uncertainty associated with not using an EN and attempting to demonstrate that use of an alternative standard fulfills EU essential requirements are often prohibitive. For example, if a manufacturer chooses not to use an EN, it needs to assemble a more extensive technical file through a costly and burdensome process because the alternative standard cannot be granted a presumption of conformity with the essential requirements or applied directives. This process must be repeated each time a similar new product is introduced to the market. Even if a manufacturer assembles such a file, there is no certainty that Member State authorities will treat the product as conforming to the EU's essential requirements. As a result, U.S. producers often feel compelled to use the relevant EN developed by the ESOs for the products they seek to sell on the EU market. This is the case even where U.S. products produced according to relevant international standards provide similar or higher levels of safety and performance.

The European Committee for Standardization (CEN) or European Committee for Electrotechnical Standardization (CENELEC) technical committees that draft the European standards generally exclude non-EU nationals from participating in that process. For example, CEN/TC 438 is the technical committee for CEN that develops and publishes standards for additive manufacturing. 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 (SMEs) 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.

The Vienna and Frankfurt Agreements, which establish technical cooperation between CEN and the International Organisation for Standardisation (ISO) and between the CENELEC and the International Electrotechnical Commission (IEC), respectively, allow for the fast-track adoption of CEN and CENELEC standards by ISO/IEC as international standards. This approach limits opportunities for non-European stakeholders to contribute to the development of the standards at an early stage.

Additionally, the United States has serious concerns regarding the EU's conformity assessment framework, as set out in Regulation (EC) 765/2008 and Decision 768/2008. Regulation 765 requires each Member State to appoint a single national accreditation body and prohibits competition among Member States' national accreditation bodies. Under the EU system, an accreditation certificate from one Member State accreditation body suffices throughout the EU. The regulation further specifies that national accreditation bodies shall operate as public, not-for-profit entities. This regulation effectively bars the 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. The EU conformity assessment approach adds increased time to market, increases costs for manufacturers, and requires U.S. testing and certification bodies to establish operations in the EU to remain competitive.

The EU also promotes adoption of ENs in other markets and often requires the withdrawal of non-EU standards as a condition of providing assistance to, or affiliation with, other countries, which can give EU manufacturers commercial advantages in those markets. Where the withdrawn standards are international standards that U.S. producers use, which may be of equal or superior quality to the ENs that replaced them, U.S. producers must choose between the cost of redesigning or reconfiguring their products or exiting the market. Further, EU trade policy seeks to narrow the definition of what is considered an international standard within the meaning of the WTO TBT Agreement. For instance, as part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard (for example, the European Union-Japan Economic Partnership Agreement, [Article 7.6](#)). 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 ISO and the IEC). Furthermore, this attempt to reinterpret which

standards should be deemed international within the meaning of the TBT Agreement is contrary to relevant decisions of the TBT Committee, which recognizes that standards developed by organizations domiciled in any WTO country can be deemed international, provided they are developed in accordance with relevant WTO principles. Standards developed by organizations in the United States could therefore be deemed international.

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

The EU regulation concerning the production, marketing, and use of chemicals as substances and in products, known as REACH, entered into force on June 1, 2007. REACH imposes extensive registration, testing, and data requirements on chemicals manufactured in or imported into the EU in quantities greater than one metric ton. REACH contains provisions permitting the European Commission to limit or ban the sale of certain substances and their uses in products on the EU market. It also contains provisions allowing the Commission to require manufacturers or users of certain hazardous chemicals to obtain authorizations for those chemicals. Furthermore, enterprises active in virtually every industrial and manufacturing sector need to have awareness of REACH because their products could contain chemicals that may be subject to its registration requirements when placed on the EU market, depending on the sum of the volumes of chemicals in their products, and each chemical registrant must account for the uses of that chemical in the products it places or intends to place on the EU market. In addition, REACH requires exporters of any article that contains a “Substance of Very High Concern” (SVHC) in an amount exceeding 0.1 percent weight-by-weight of said article to notify their supply chain recipients of the presence of these substances and provide relevant information to allow for the safe use of the article.

The United States agrees on the importance of regulating chemicals to ensure environmental and health safety. The United States is concerned, however, that REACH results in requirements that are either more onerous for foreign producers than for 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 not directly relevant to the specific hazards and proposed uses of a registered substance. 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, labeling, and safety data information requirements.

Similar issues have arisen under other EU regulations, including under the Biocidal Products Regulation 528/2012. In May 2019, the EU notified three draft implementing decisions not approving silver compounds as active ingredients for use in certain biocidal products. The United States has expressed concerns about the European Chemical Agency (ECHA) testing methodology used to determine the efficacy of these products.

Substances of Very High Concern

The United States continues to raise concerns bilaterally with the EU on the lack of public notice and comment associated with the process by which substances are screened for the Substances of Very High Concern (SVHC) Candidate List (CL), and then after authorization, subsequently restricted or banned as SVHCs. Member States take the lead on identifying substances for the CL via the preparation of a Risk Management Option Analysis (RMOA). The RMOA process evaluates the potential hazards of a substance, its uses, and means of managing any identified risks. The problem for U.S. exporters is that more than one Member State may prepare a substance RMOA, and these RMOAs are not always consistent in approach or utilize a public consultation process to receive comments. Once a substance is on the CL, companies

manufacturing or importing more than one ton of the substance annually must declare the substance to the EU. Companies should also provide safety data sheets to their customers, and as of 2021, these products may be subject to EU Waste Directive reporting and disposal requirements. Substances that are moved from the SVHC CL to authorization may be restricted or banned if the EU determines substitutes exist. In the case of certain siloxanes widely used in the cosmetics sector as well as in other products, the EU initiated the SVHC CL prior to the completion of an environmental emissions monitoring program agreed to with industry. The United States continues to monitor the SVHC status of certain siloxanes.

Court of Justice of the European Union, Judgment in Case C-106/14

On September 10, 2015, in case C-106/14, the CJEU released an important ruling on the notification and information duties applicable to the producers and importers of products, known as articles under REACH. The CJEU held that the notification and information duties apply to each individual article in the product and not just to the whole assembled or finished product. Producers and importers that deal with more than one ton per year of any SVHC present in products over 0.1 percent by weight of the sum of the articles in the product are subject to the CJEU ruling.

In June 2017, the ECHA published new guidance on requirements for substances in component articles to assist companies in meeting the requirements of the court ruling. The United States continues to assess the trade impact on manufactured products such as vehicles, information and communication technology (ICT) equipment, and medical devices and remains concerned that requiring notification of components rather than the final good will increase burdens on both producers and importers.

Chemicals: Classification, Labeling and Packaging Regulation

The Classification, Labeling and Packaging Regulation (CLP) operates in tandem with REACH, providing for the harmonization of the classifications of REACH substance registrations. CLP requires chemical manufacturers, importers, and downstream users of CLP-classified substances and mixtures to appropriately manage, label, and communicate risk management measures for any potentially hazardous chemicals used in their articles and products. U.S. stakeholders note that the process to determine CLP classifications often seems arbitrary, since the EU only provides six weeks public comment on its classifications, even when the classification proposed by the EU differs significantly from the classifications used by industry in their REACH registrations. The United States is concerned that because the CLP is hazard-based, it may result in product restrictions and labels that are unnecessarily disruptive to trade. The labeling requirements can also be onerous for U.S. companies, since it can require products to carry a carcinogen label, even when a company can show that there is no risk of exposure to the chemical in the product. The United States is also concerned that the EU only notifies the classifications to the WTO once ECHA's scientific reviews are largely completed, calling into question whether comments provided at this stage can be meaningfully taken into account. For instance, the EU in the 14th adaptation of the CLP admitted that it had not yet even scientifically assessed whether the cobalt residue in metal compounds is a health hazard but intended to go forward with the classification, despite the resulting restrictions on products.

Cosmetics: Scientific Committee on Consumer Safety Ingredient Reviews & Amendments to the EU Cosmetics Regulation

Regulation (EC) 1223/2009 of the European Parliament and of the European Council on cosmetic products (EU Cosmetics Regulation) provides that the Scientific Committee on Consumer Safety (SCCS) conduct risk assessments for ingredients notified for use in cosmetics in the EU market. Based on SCCS assessments, the Commission rules on whether the use of the assessed ingredient should be restricted and, if so, in which annex within the EU Cosmetics Regulation the ingredient 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 publicly notified. According to its Rules of Procedure, the SCCS solicits additional information on an invitation-only basis. In practice, this process can prevent non-EU interested parties from providing input and can translate into assessment determinations based on risk assessments that do not fully consider available scientific evidence or relevant uses of a particular cosmetics ingredient. Once an ingredient has been assessed, it cannot be used in products for uses not reviewed, even if there is no post-market or other data to indicate a concern, resulting in significant market disruption. Companies that petition for a review of a banned, non-reviewed use may have to wait two years or more for the review, after which they can again place their product on the market. The United States exported \$3.5 billion worth of cosmetic products to the EU in 2019.

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.

In November 2016, the European Commission presented a new directive (RED II) for the period 2020 to 2030 as part of a comprehensive “Winter Energy Package” of legislative proposals that includes initiatives on bioenergy sustainability (liquid biofuels and biomass). The revised RED II entered into force in December 2018.

The United States expressed its concern to the European Commission during the drafting of the first RED that the directive and its paperwork and verification requirements disrupt trade in U.S. products (specifically soybeans for biofuel and corn ethanol). For instance, one method to meet the sustainability and GHG savings requirements of RED is to certify biofuel production through a voluntary certification system.

Since April 2015, the U.S. Soybean Export Council (USSEC) has sought EU recognition of the U.S. Soybean Sustainability Assurance Protocol (SSAP) as a voluntary certification scheme. In April 2018, USSEC resubmitted a voluntary scheme application to the Commission. On January 29, 2019, the Commission recognized the SSAP as a voluntary scheme under the RED. This allowed soybean oil made from SSAP-certified soybeans to be used as feedstock for biodiesel production in the European Union.

Some unresolved concerns remain that the United States continues to actively monitor regarding the impact of RED II’s complex sustainability criteria for biomass on U.S. exports of sustainable wood pellets. Whether forest management costs will increase due to certification requirements, logger training, and monitoring remains to be seen. If the wood cannot be recognized as meeting the sustainable standards for renewable energy, it could lose its competitive advantage to export. The United States exported \$793 million in wood pellets to the EU in 2018 (latest data available).

RED II requires EU Member States to prepare 10-year National Energy and Climate Plans (NECPs) for 2021 to 2030 that outline how they will meet the new 2030 targets for renewable energy and for energy efficiency. Member States needed to submit a draft NECP by December 31, 2018. The deadline for submitting the final plans to the European Commission was December 31, 2019. (As of March 4, 2020, six Member States—France, Germany, Ireland, Luxembourg, Romania, and Spain—had not submitted NECPs). However, on December 11, 2019, the EU published a communication regarding its “European Green Deal,” which includes a plan to reassess sustainability criteria for biofuels and forestry biomass.

Depending on how the sustainability criteria is structured in the renegotiations of RED II, the revised directive could impede hundreds of millions of dollars of biomass exports to the EU. The United States continues to monitor developments and evaluate the potential impact on U.S. exports.

Member State Sustainability Criteria

The Netherlands: In the Netherlands, local organizations and the Dutch government are adopting and implementing standards and standard-related measures that are impeding or threatening to impede U.S. trade. For example, local organizations, such as the Sustainable Trade Initiative (IDH) and the Forest Stewardship Council (FSC), have developed standards for soybeans and wood pellets, respectively, that have been supported by the Dutch government and effectively require U.S. producers to meet onerous certification requirements. After China and Indonesia, the Netherlands is the third largest importer of soybeans and soybean derivatives in the world. On March 30, 2015, the Dutch government amended the regulation governing sustainability requirements for solid biomass and implemented onerous sustainability criteria for wood pellets. These criteria include a requirement for sustainability certification at the forest level, effectively precluding reliance on the U.S. risk-based approach to sustainable forest management. As a result of the implementation of the criteria, wood pellet exports to the Netherlands have not kept pace with demand. Although U.S. exports of wood pellets to the Netherlands increased to \$19.2 million in 2019, industry suggests the market would have much greater potential if trade requirements were simplified.

Energy Efficiency Regulations

In July 2018, the EU proposed measures that would have required data center operators and clients to select servers based on the servers' idle characteristics rather than the servers' work capacity. U.S. information and communications technology (ICT) companies expressed concern about the impact of this requirement and associated testing requirements, which would have affected approximately \$12 billion worth of equipment sold in the EU each year. Although the EU ultimately adopted an energy efficiency metric for data servers and storage products (the Server Energy Efficiency Rating Tool (SERT)) that U.S. industry considers to be less trade restrictive, industry has noted that the regulation imposes criteria on how server and data-storage manufacturers should charge their customers for upgrades, provisions that may impact the ability of U.S. manufacturers to sell into the EU market.

In 2019, the United States raised concerns about energy efficiency requirements for electronic displays. The United States was concerned about the overly broad scope and specific energy efficiency requirements. In addition, the United States had transparency concerns because significant changes were made to the regulation after it was notified to the WTO, including banning all halogenated flame retardants in stands and enclosures without a technical justification, which denied stakeholders the ability to comment on that change and for those comments to be taken into account. The United States continues to monitor developments in these areas.

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.

Agriculture Quality Schemes

EU Regulation 1151/2012 “on quality schemes for agricultural products and foodstuffs” combines into one regulation rules for two different EU schemes and adds new rules on optional terms. The regulation applies to a range of agricultural products, covering: Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI); “Traditional Specialties Guaranteed” (TSG); and optional quality terms. Optional quality terms are intended to provide additional information about product characteristics such as “first cold-pressed extra virgin olive oil” and “virgin olive oil.” A separate measure addressing the marketing standards for wine and spirits was notified to the WTO on September 11, 2011.

The schemes covered by the regulation are: (1) certification schemes for which detailed specifications have been laid down and are checked periodically by a competent body; and (2) labeling schemes, which are subject to official controls and communicate the characteristics of a product to the consumer. Schemes can indicate that a product meets baseline requirements but can also be used to show “value-adding qualities,” such as specific product characteristics or farming attributes (*e.g.*, production method, place of farming, mountain product, environmental protection, animal welfare, organoleptic qualities, “Fair Trade,” etc.).

The United States remains concerned that “place of farming” requirements are unclear, difficult to comply with, and lack a basis in international standards. International standards promulgated by the Codex Alimentarius Commission (Codex), for instance, maintain no recommendation for place of farming designations. Codex has also rejected proposals that would have expanded country of origin designations to foods with multiple ingredients, because such labeling caused consumer confusion.

Further, the United States remains concerned over certain aspects of the TSG requirements, including whether “prior use of a name” includes a trademark or prior geographical indication. The United States also is seeking clarification of the manner of precedence used in determining TSG requirements relative to trademarks. Despite assurances from the EU that the provisions of EU Regulation 1151/2012 “ensure that a prior trademark is not affected by the registration of a TSG,” it remains unclear whether prior use of a trademark will be grounds for opposing registration of a TSG. Finally, U.S. stakeholders have expressed concern about the EU’s decision to shorten the comment period to oppose a registration from six months to two months.

The United States continues to stress to the Commission that common names of products should not be absorbed into quality schemes, whether for wine or other products. For instance, if a Codex standard exists, or if a name is used in a tariff schedule or by the World Customs Organization, the United States believes that the name should be excluded from the quality schemes. The United States takes issue with the Commission decisions to register “danbo” and “havarti” as PGIs, despite the existence of Codex standards. The United States has further argued to not require new certification and labeling quality schemes in order to gain market access; however, where the EU implements such schemes, efforts should be made to acknowledge voluntary U.S. industry definitions. Similarly, U.S. processes and procedures should be acceptable for labeling requirements, and system and process comparability with industry definitions should be sought in order to minimize any negative market access impact for U.S. exports.

In August 2018, the EU notified to the WTO a draft regulation as part of the reform of its Common Agricultural Policy, which included proposed amendments to Regulation 1151/2012. However, the

proposed amendments do not appear to address concerns expressed above. The U.S. Government and industry have expressed concern about the draft, including through written comments, and will continue to engage with the EU on this issue.

Wine Traditional Terms

Separate from its regulation on agricultural quality schemes, the EU continues to aggressively seek exclusive use for EU producers of “traditional terms,” such as “tawny,” “ruby,” and “chateau,” on wine labels. Such exclusive use of traditional terms impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms within their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May 2002. In June 2010, U.S. stakeholders submitted applications to be able to use the terms in connection with products sold within the EU. In 2012, the EU approved the applications for use of two terms, “cream” and “classic,” but the EU’s delayed application approval process for other terms continues to be a significant concern. The United States has repeatedly raised this issue in the WTO TBT Committee and also has pursued bilateral discussions. Beyond approving the two terms, the EU has not taken any visible steps to address U.S. concerns.

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. The United States will continue to urge the EU and other trading partners to end whiskey aging requirements that are restricting U.S. exports of whiskey from being labeled as such.

Certification of Animal Welfare

The EU requires animal welfare statements on official sanitary certificates. The EU’s certification requirements do not appear to advance any food safety or animal health objectives and thus do not belong on sanitary certificates. The U.S. position is that official sanitary and phytosanitary certificates – the purpose of which is broadly limited to prevent harm to human, animal, or plant-life or health from diseases, pests, or contaminants – should only include statements related to animal, plant, or human health, such as those recommended by Codex, World Animal Health Organization (OIE), and the International Plant Protection Convention (IPPC) or have scientific justification.

Sanitary and Phytosanitary Barriers

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures unnecessarily restrict trade without furthering their safety objectives because they are not based on scientific principles, maintained with sufficient scientific evidence, or applied only to the extent necessary. Moreover, the United States believes there are instances where the EU should recognize current U.S. food safety measures as equivalent to those maintained by the EU because they achieve the same level of protection. If the EU recognized the equivalence of U.S. measures, trade could be facilitated considerably.

Hormones and Beta Agonists

The EU maintains various measures that impose bans and restrictions on meat produced using hormones, beta agonists, and other growth promotants, despite scientific evidence demonstrating that such meat is safe for consumers. U.S. producers cannot export meat or meat products to the EU unless they participate in a costly and burdensome process verification program to ensure that hormones, beta agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by 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. In 1996, the United States brought a WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) over its ban on beef treated with any of six growth promotant hormones. A WTO dispute settlement panel concluded – and a subsequent report of the WTO Appellate Body affirmed – that the ban was maintained in breach of the EU's obligations under the WTO SPS Agreement. Following the failure by the EU to implement the recommendations of the WTO DSB to bring itself into compliance with its WTO obligations, the United States was granted authorization by the WTO in 1999 to suspend concessions. Accordingly, the United States levied *ad valorem* tariffs of 100 percent on imports of certain EU products. The value of the suspended concessions, \$116.8 million, reflected the damage that the hormone ban caused to U.S. beef sales to the EU.

In September 2009, the United States and the European Commission signed a Memorandum of Understanding (MOU), which established a new EU duty-free import quota for grain-fed, high quality beef (HQB) as part of a compromise solution to the U.S.-EU hormone beef dispute. Since 2009, Argentina, Australia, Canada, New Zealand, and Uruguay have also begun to ship under the HQB quota. As a result, the market share of U.S. beef in the HQB quota has decreased significantly. Since 2014, the United States has engaged in discussions with the EU on the future operation of the MOU to ensure that U.S. producers are compensated through increased export benefits in the EU market in exchange for the continued suspension of WTO-sanctioned trade action. In December 2016, the United States sought public comments related to a request from the U.S. beef industry to reinstate trade action against the EU. The United States also held a public hearing in connection with this request on February 15 and 16, 2017. The United States considered the various views and points in the public comment submissions and testimony from the public hearing. To remedy the erosion of U.S. beef access to the HQB, the United States and the EU have engaged in negotiations to change the HQB quota, after the EU received a mandate to do so from the Council in October 2018. In 2019, the United States and the EU concluded a new agreement, which established a duty-free tariff rate quota (TRQ) exclusively for the United States. Under the agreement, American ranchers will have an initial TRQ of 18,500 metric tons annually, valued at approximately \$220 million. Over seven years, the TRQ will grow to 35,000 metric tons annually, valued at approximately \$420 million. The agreement went into effect on January 1, 2020.

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.

Antimicrobial Resistance and the Restrictions on the Use of Antimicrobials

On January 7, 2019, the EU published Regulation (EU) 2019/6 on veterinary medical products, which revises the European protocols for approval of veterinary medical products and their use. A specific goal is to address the problem of increasing antimicrobial resistance (AMR) by more strictly defining the criteria for use of antimicrobial products in animal medicine and defining a list of products that will be exclusively reserved for human medicine. By including an extraterritoriality clause in Article 118 that would impose restrictions based on regulatory approvals of antimicrobials in third countries rather than on residue levels in products offered for import, this regulation has the potential to hamper or block all U.S. exports which include products of animal origin. The implementation date for this veterinary medicine regulation is January 28, 2022, and the EU is currently developing implementing legislation to fix the future criteria of use of veterinary products as well as the list of products exclusively preserved for human medicine.

Agricultural Biotechnology

Lack of predictability, excessive data requirements, and delays in the EU's approval process for genetically engineered (GE) crops have prevented GE crops from being placed on the EU market even though these products have been approved (and grown) in the United States. Decades of data and experience demonstrate the safety of these crops as well as the benefits of their use in reducing carbon emissions, pesticide use, and impact on non-target organisms, while increasing soil health, crop yields, and farmers' incomes. Despite the long record of safe use, the length of time taken for EU approvals of new GE crops appears to be increasing.

As of December 2019, the United States is tracking 49 agricultural biotechnology product applications (including renewals) of corn, soybean, canola, sugar beet, and cotton submitted to the EU. Of those applications, 40 are waiting for a scientific review by the European Food Safety Authority (EFSA) and 9 are waiting for approval action by the Commission.

In early December 2019, the EU issued new food/feed approvals for four corn products, and in late July 2019, the EU issued new food/feed approvals for seven products (two cotton, one soybean, and four corn). While these new authorizations and renewals are welcome, the non-renewal approvals for four corn products took over five years on average to complete from the time the applications were submitted, with one product taking over eight years to approve. The EU's own legally prescribed approval time for such biotechnology imports is 12 months (six months for the review with EFSA and six months for the political committee process (comitology)). In addition, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. The U.S. Department of Agriculture (USDA) estimates that the prolonged EU approval process (on average 7.5 years) and resulting asynchronous approvals has resulted in an annual loss of approximately \$2 billion per year to U.S. agriculture.

Exports of U.S. corn and rice to the EU continue to be adversely impacted. Due to extensive EU approval delays of GE corn products, industry continues to express concerns that exports containing a low-level presence (LLP) of unapproved GE crops are at risk. LLP is the result of asynchronous approvals, where the GE product is approved and cultivated in the country of export, but not approved for use in the country of import. 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 rice biotechnology products (LL601, LL62, and LL06) are approved for cultivation in the United States, no GE rice varieties are grown for commercialization. In 2006, due to an exposure of LL601 to commercial channels before it was approved for use by U.S. producers, the EU suspended progress on the approval of LL62. Since that time, rice exports to the EU from the United States remain well below former levels and commercial uncertainty continues with LLP concerns. The application for rice biotechnology

product LL62, which was originally requested in the EU in 2004, has been pending with the Commission since 2007.

The United States continues to work with the EU to support trade in corn byproducts and rice, but success will depend on the EU addressing the larger issue of delays in the biotechnology approval process. The United States continues to urge the EU to participate in discussions of a practical approach to LLP under the auspices of the Global Low-Level Presence Initiative.

On July 25, 2018, the CJEU ruled that gene-edited crops are subject to the same onerous barriers associated with EU regulations implemented under EU Directive 2001/18/EC (commonly referred to as the “GMO Directive”). The EU has not yet developed mechanisms for implementing the CJEU judgment. The judgment is anticipated to further exacerbate and expand existing barriers to agricultural trade innovation. In November 2019, in light of the CJEU ruling, the European Council asked the Commission to submit a study on the legal status of novel genome techniques and, if appropriate, a legislative proposal on how to regulate new plant breeding techniques. The study is expected to be completed by April 30, 2021.

Member State SPS Measures

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, because none of the five Member States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted-out. As of 2017, only Portugal and Spain cultivate GE corn.

Seventeen Member States and four regions in two countries have opted-out of cultivation using biotechnology seeds. The 17 Member States that requested their entire territory to be excluded from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. The four regions are Wallonia in Belgium and Northern Ireland, Scotland, and Wales in the United Kingdom. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were in the pipeline in 2015, apart from Denmark and Luxembourg, which have only banned MON810 and three of the seven varieties of corn in the pipeline.

Austria: The Austrian government implemented its right to opt out of GE cultivation. In addition, the Austrian government has used its authority to specifically exclude the use of EU approved agricultural biotechnology in Austria. For political reasons, Austria maintains earlier cultivation bans on the books although such bans have been rendered obsolete by the EU opt-out clause.

Bulgaria: Bulgaria’s entire territory is excluded from the geographical scope of agricultural biotechnology applications. In 2015, Bulgaria decided to ban entirely the cultivation of MON810, seven varieties of corn, soybeans 40-3-2, and carnation Moonshadow 1. The ban also extended to field research.

France – Ban on Food Packaging Containing Bisphenol A: The production or import of food containers containing Bisphenol A (BPA) has been banned in France since January 1, 2015. The law applies to all products manufactured using BPA, where BPA is “intentionally” used to manufacture part or all of the final product, or where the BPA comes from an environmental or adventitious source. The French law is inconsistent with a January 21, 2015 EFSA opinion, which stated that BPA does not present any risk to

consumers. Noting differences in interpretation concerning the methodological limitations of toxicity studies on BPA, the French Agency for Food, Environmental and Occupational Health and Safety recommended on October 12, 2017, that specific objective criteria be defined and harmonized between EFSA and national health agencies, taking into account the new EFSA assessment launched in 2017 on risks associated with BPA.

In October 2019, the French Agency for Food, Environmental and Occupational Health and Safety disclosed scientific studies indicating that bisphenol B (BPB), which is considered a substitute to BPA, could be more harmful than BPA as an endocrine disruptor. Following this study, the French government said that it will advocate for BPB to be listed as an endocrine disruptor on the REACH list, which could in turn have an impact on trade because BPB is widely used in the plastic packaging of many products and the lining of metal cans in the United States.

France – Ban on Cherries from Countries that Authorize Dimethoate: On April 18, 2019, France reinstated a ban on the import and sales of cherries from countries where dimethoate—a pesticide and acaricide that kills mites and ticks—can be used on cherries and cherry trees. France’s decision followed a ban on domestic production of this chemical compound, which France claims is harmful to human health. France imports roughly one-fifth of its cherry consumption, the bulk of which comes from EU countries including some (such as Germany and Spain) that have already banned dimethoate. Under the ban, the United States is not allowed to export cherries to France, even if the producer has never applied dimethoate. This ban ignores information provided by the United States documenting that dimethoate is not used in certain cherry producing states, or that it is used postharvest when there is no possibility for residues (and thus no risk to consumers). The dimethoate ban potentially sets a precedent for France to unilaterally ban products from countries using compounds approved for use in the EU but banned only in France under safeguard measures intended for short-term emergency cases. For example, France in late 2017 announced its intention to ban glyphosate in three years, despite the fact that the EU reauthorized the chemical’s use for five years.

Greece: Greece does not have a coexistence policy and maintains a de facto ban on both the cultivation and importation of GE products. In Greece, there are no GE plants or crops under development. Greece has maintained a de facto ban on GE products since April 2005, when it implemented a “safeguard clause” prohibiting the field release of MON 810 (for corn). Greece is in the process of adopting new legislation that will incorporate EU Directive 2015/412 to officially implement the cultivation “opt out” provision. The draft legislation passed the public comment period in 2016 and is still awaiting governmental action.

Italy: Since 2013, Italy does not commercially cultivate any GE crops, even for GE seed production, despite two EFSA rulings stating no new scientific evidence has been presented to support Italy using the safeguard clause. Since 2013, Italy has opted out of cultivating EU authorized crops under EU Directive 2015/412.

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 has voted to prolong this suspension in the past and most recently extended it for an additional two years until January 1, 2021. Poland recognizes the July 2018 CJEU ruling that new breeding techniques are considered as GE; however, to date, no Polish legislation has been implemented to enforce this decision.

Slovakia: Since 2017, Slovakia has issued annual notices stating that no GE plants are cultivated in a given year. The ban on planting of GE materials in Slovakia has direct and indirect impacts on U.S. agricultural sales. For instance, U.S. seed companies cannot access the Slovak market as most high-value U.S. seeds are produced using GE methods.

Pathogen Reduction Treatments

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the Commission. U.S. exports of beef, pork, and poultry to the EU have been significantly hurt, because the Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are antimicrobial rinses used to kill pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by USDA, after establishing their safety on the basis of scientific evidence.

In 1997, the EU began blocking imports of U.S. products that had been processed with PRTs, which have been safely used by U.S. meat producers for decades. After many years of consideration and delay, in May 2008 the Commission prepared a proposal to authorize the use of the four PRTs during the processing of poultry, but imposed unscientific highly trade-restrictive conditions with respect to their use. Member States rejected the Commission's proposal in December 2008.

In June 2013, the USDA submitted an application dossier for the approval of peroxyacetic acid (PAA) as a PRT for poultry. In March 2014, EFSA published a favorable scientific opinion on the safety and efficacy of PAA solutions for reduction of pathogens on poultry carcasses and meat. After a long period of inaction, the Commission eventually put forward the authorization of PAA as one part of a three-pronged strategy to mitigate campylobacter in poultry. It later withdrew the proposal from the Standing Committee agenda in December 2015, citing lack of evidence of PAA's efficacy against campylobacter. The Commission has no plans to put forward the proposal for approval at the Standing Committee at this time.

The United States believes the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs, and the United States will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry.

In March 2017, the National Pork Producers Council submitted an application to the Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the Commission in September 2017. EFSA published its evaluation in December 2018, confirming the safety of the use of acetic acid and lactic acid in pork processing. The United States will continue to engage the EU regarding the safe use of PRTs in poultry, pork, and beef processing as an effective tool to improve food safety.

Certification Requirements

EU certification requirements are limiting U.S. agricultural exports such as fish, meat, dairy, eggs, processed products, and animal byproducts, adding unnecessary costs to the movement of exports in Europe, irrespective of whether these goods are destined for commercial sale in the EU, transiting through the EU, or even intended for cruise ships or U.S. military installations located in the EU. These requirements often appear 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 the completion of a multitude of forms for each product containing references to multiple levels of EU legislation that in turn cites other legislation. This creates enormous confusion and burden for manufacturers and exporters, as well as U.S. regulatory agencies, EU Member State authorities, and EU importers. Codex guidance on certifications lays out the minimum amount of information necessary to ensure the safety of the product being traded. Differences of interpretation of EU legislation amongst Member States creates legal instability and constitutes an

additional burden for U.S. exporters. 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 more burdensome than necessary, 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 add unnecessary costs without scientific justification. The United States continues to engage the EU regarding the SCC requirement in the appropriate technical working groups.

Animal Byproducts, Including Tallow

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials (category 1 and 2 materials). Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products as being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already begun to block consignments of various technical blood products.

Tallow exported to the EU must meet criteria that do not appear to be scientifically justified and significantly exceed the recommendations of the OIE. The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from this tallow contain no more than a maximum level of insoluble impurities consistent with international recommendations. Specifically, tallow with less than 0.15 percent insoluble impurities does not pose any risk of bovine spongiform encephalopathy (BSE). Tallow under these specifications should be allowed for import without any animal health-related requirements according to the OIE's international and scientifically based recommendation.

Used cooking oil (UCO) is used for the production of biodiesel. Individual Member States implement national measures for the importation of UCO. However, in 2016 the EU circulated a draft regulation to harmonize requirements EU-wide. The draft requirements appear to follow the EU's non-science-based approach regarding importation of tallow and would curtail U.S. exports of UCO to the EU. The United States provided feedback in writing to the EU on their proposed measure and continues to encourage the EU to eliminate unjustified restrictions on imports of UCO.

Live Cattle

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU on route to third countries, due to EU certification requirements for several bovine diseases. Although the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) successfully resolved issues related to bovine leucosis and bluetongue in 2003, the EU subsequently established certification requirements for BSE that precluded U.S. exports. Since then, the EU model certificate has been amended to align the BSE requirements with the OIE Code. Although the United States can now meet the BSE certification requirements, U.S. exporters remain blocked because the United States and EU have not agreed

on the conditions and format for the export certificate. APHIS continues to work with the EU to resolve the remaining import health conditions and agree on a mutually acceptable certificate through the U.S.-EU Animal Health Technical Working Group.

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 program already provides the necessary verifications regarding the history of the animal. The United States has requested the removal of the EU's "born and raised" requirement for all U.S. commodities. Consistent with the recommendations of OIE, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in the appropriate bilateral technical working groups and the WTO SPS Committee.

Agricultural Chemicals

Hazard-based Cutoff Criteria - Categorization of Compounds as Endocrine Disruptors

Regulation (EC) 1107/2009, which governs the registration of crop protection products, establishes several hazard-based "cutoff" 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 cutoff 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. 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, while the EU appears to be setting up approaches to regulating these compounds that are not based on scientific principles and evidence, thereby restricting trade without improving public health.

On June 15, 2016, the Commission presented two draft legal acts outlining scientific criteria to identify EDs in agricultural products, one falling under the Biocidal Products legislation and the second under the Plant Protection Products legislation. In the draft legal acts, the Commission proposes to use the WHO definition of endocrine disruptors and include examination of all available information in order to base decisions on weight of evidence. However, the proposal does not specifically state that it will include consideration of other hazard characterizations such as potency, severity, and reversibility in these

examinations. Without such considerations, the EU may potentially block substances regardless of the actual level of risk to human health.

On April 20, 2018, following a series of revisions for the proposed criteria and the insertion and removal of a procedure for derogations allowing usage of substances falling under them, the Commission published Regulation 2018/605, identifying endocrine-disrupting properties under Regulation 1107/2009 on plant protection products in the Official Journal. Since November 10, 2018, the criteria to identify endocrine disruptors have applied to all ongoing and future evaluations of active substances used in plant protection products. The biocidal products criteria were adopted earlier and have applied since June 7, 2018.

In June 2018, the ECHA and the EFSA published a technical guidance document to implement the criteria. The scope of trade effects of this regulation is broad and overlaps with that of the other hazard criteria and environmental criteria the EU uses in regulating pesticides. The EU obscures its hazard-based decisions with onerous data requirements that allow the Commission to claim an inability to measure risk. 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) 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 cutoff 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 often not commercially viable. The EU is conducting an evaluation of existing legislation on plant protection products and pesticide residues through a Regulatory Fitness and Performance process. Through this process, it is unclear whether the EU may choose to adjust Regulation 396/2005 to bring it in line with the hazard-based principles of Regulation 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU resets the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase. Given that the hazard criteria are now in place, the United States is monitoring the EU approach to establishing import tolerances for substances. According to industry estimate, U.S. exports valued at over \$5 billion and global trade amounting to \$75 billion are at risk of significant harm. 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.

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.

Government Support for Airbus

Over many years, Belgium, France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed between 33 percent to 100 percent of the development costs (launch aid) of all Airbus aircraft models and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, in addition to political and economic pressure on purchasing governments.

The EU aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. Member State governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including €751 million (approximately \$851 million) spent by the city of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 “superjumbo” aircraft. French authorities also spent €82 million (approximately \$206 million) to create the AeroConstellation site, which contains additional facilities for the A380. After having given the Airbus A380 more than \$5 billion in subsidies, the relevant Member State governments have also provided launch aid in comparable amounts for the newer Airbus A350 XWB aircraft.

Airbus SAS, the successor to the original Airbus consortium, is owned by the Airbus Group, now the second largest aerospace company in the world. This entity was previously known as the European Aeronautic, Defense, and Space Company (EADS). The name change accompanied a reorganization of the company’s ownership structure, resulting in the French and German governments each owning up to 11 percent of the shares, the Spanish government approximately 4 percent, and the remaining approximately 74 percent of shares trading on open markets. The reorganization also ended these governments’ rights to veto strategic decisions and to appoint directors to the Airbus board. Instead, the governments only have the right to veto board members appointed by the company. The Airbus Group has accounted for more than half of worldwide deliveries of new large civil aircraft in recent years and is a mature company that should face the same commercial risks as its global competitors.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that Member State subsidies were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011.

On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules as well as authorization from the WTO to impose countermeasures. The EU objected to the proposed level of countermeasures, and the matter was referred to arbitration on December 22, 2011. The arbitration was subsequently suspended in January 2012 at the request of both parties pending the conclusion of the compliance proceeding. The WTO compliance panel issued its report on September 22, 2016, finding that the Member States had not withdrawn the past subsidies conferred by \$17 billion in past launch aid to Airbus and that the launch aid of nearly \$5 billion for the A350 XWB was also contrary to WTO rules.

On October 13, 2016, the EU appealed certain findings to the WTO Appellate Body. On May 15, 2018, the WTO Appellate Body confirmed that EU financing of Airbus’s A380 and A350 XWB aircraft is a subsidy and continues to be in breach of the EU’s and the relevant Member State’s WTO obligations. On July 13, 2018, at the request of the United States, the arbitration regarding the level of countermeasures (suspended in 2012) was resumed. On October 2, 2019, the Arbitrator concluded that the United States may request authorization from the WTO DSB to take countermeasures with respect to the EU and certain Member States at a level not exceeding, in total, \$7.5 billion annually. At the request of the United States, the DSB, authorized the United States to impose such countermeasures on October 14, 2019. The countermeasures went into effect on October 18, 2019.

Prior to the resumption of the arbitration proceedings, the EU initiated a second compliance proceeding on May 17, 2018. A second compliance panel was established on August 27, 2018. On December 2, 2019, the second compliance panel issued its report finding that the EU continued to be in breach of its WTO

obligations. The panel found that none of the measures taken by the four Member States amounted to a withdrawal of the launch aid for the A350XWB and A380. The panel also found that that launch aid for the A380 and A350XWB continued to be a genuine and substantial cause of lost sales to certain U.S. aircraft and an impedance to exports of U.S. aircraft to China, India, Korea, Singapore, and the United Arab Emirates. On December 6, 2019, the EU filed a notice of appeal on certain findings. On December 10, 2019, the Appellate Body suspended its work on the appeal.

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. In this context, the Belgian government decided in 2000 to set aside a budget of €195 million (approximately \$220.9 million) for Belgian industrial participation in the A380 program and in 2008, a budget of €150 million (approximately \$170 million) for Belgian industrial participation in the A350 XWB program. Belgium has always stated that these were refundable advances, partially covering nonrecurring costs in accordance with the EU regulations. Both in 2006 and in 2009, the Commission initially disputed that view, but later acquiesced. Only industrial research or experimental development projects linked to the A350 XWB and A380 programs can be (partially) financed through reimbursable loans in accordance with EU regulations. For the A380 program, the average intervention level is 47 percent and for the A350 XWB program, 54 percent. These interventions are not considered grants but reimbursable advances based on sales forecasts for each aircraft. This effectively constitutes 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 (approximately \$419 million). For the A400M program, the Belgian federal government in 2016 agreed on a €45 million (approximately \$51 million) grant for the 2017-2020 period.

France: In addition to the seed investment that the French government provided for the development of the A380 and A350 XWB aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as airplanes, aircraft engines, helicopters, and onboard equipment. In February 2013, the government confirmed €1.4 billion (approximately \$1.6 billion) in reimbursable advances for the A350 over the period 2009-2017 and a similar scheme for the helicopter X6 to be built by Airbus Helicopter. The government's 2020 budget includes €75 million (approximately \$95.4 million) in reimbursable advances for aeronautical/aviation products, down from €230 million (approximately \$256.8 million) in the 2019 budget (perhaps due to a sharp decrease in A380 program repayments). French appropriations for new programs include €10.1 million (approximately \$12.8 million) in support of research and development in the civil aviation sector in 2020, up from €2.6 million (approximately \$3.3 million) in 2019.

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 (approximately \$85 million) destined for the French aeronautical sector. The equity fund's objective is to support the development of small and medium-sized subcontractors that supply the aeronautical sector. The Aerofund III equity fund was launched in 2013 with a fundraising target of €300 million (approximately \$340 million) and an objective of becoming the leading aerospace industry investment fund in Europe. As of December 31, 2018 (latest data available), Aerofund III had invested €111 million (approximately \$235 million) in over ten aerospace companies.

Germany: Between 2010 and 2015, the German government provided Airbus with a €1.1 billion (approximately \$1.2 billion) loan package for the new A350 XWB wide-body jet. The loan runs until 2031 and covers deliveries of 1,500 aircraft. In addition to the A350 XWB loan package, Airbus also received about €42 million (approximately \$1.040 million) for the development of the A380 of which Airbus has so far only repaid about one-third. Airbus also receives funds from the government's aeronautics research program for a number of projects.

Spain: On April 6, 2018, the Spanish government reauthorized the Ministry of Economy, Industry, and Competitiveness to grant a refundable advance to Airbus of €12.7 million (approximately \$14.4 million) for Spain's continued participation in the development program for the A350 XWB aircraft. Spain's contribution has been reauthorized since 2009 and continued through 2019. In May 2016, the Spanish government approved a Royal Decree regulating the direct granting of refundable advances to Airbus Operations, which modified the time scope of the old advances regulated in another Royal Decree of November 6, 2009, in order to extend its period of validity until 2019. As of 2018 (latest data available), the industry had a turnover of €1.8 billion (approximately \$13.9 billion) and directly employed approximately 57,000 people.

GOVERNMENT PROCUREMENT

Government procurement is governed by the 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 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 Party to the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA.

In July 2019, the EU published guidance to public buyers in EU Member States on participation of third country (non-GPA or non-FTA partner) bidders in the EU procurement market, aimed at reinforcing the importance of reducing predatory low-priced bids. This guidance does not change the access that U.S. companies have to the EU under the GPA. However, the guidance provides neither a definition of what constitutes an abnormally low bid, nor a method to conduct the evaluation. While a public buyer must give the third country bidder an opportunity to explain and justify a low-priced bid, Member States are free to set up national rules and methods to implement this process.

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. The most recent report, commissioned by the EU in 2011, 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 procurement in Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Romania, Slovakia, and Slovenia have all voiced concerns over a lack of transparency, including with respect to overly narrow definitions of tenders, language and documentation barriers, and implicit biases in favor of 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. Additional Member State-specific trade barriers to U.S. participation in public procurement processes are discussed below.

Bulgaria: Stakeholders report that the public procurement process in Bulgaria is frequently discriminatory and unfair. There are persistent complaints that tenders are too narrowly defined and are tailored to a specific company. For example, a U.S. company seeking to sell nuclear fuel to Bulgaria's state-owned Kozloduy Nuclear Power Plant (KNPP) has faced substantial barriers in seeking to enter into competition with a Russian state-owned company, which is the incumbent supplier of nuclear fuel to the KNPP. Though the Russian supplier completed a new fuel licensing procedure quietly and free of any opposition in 2016, the same procedure for the U.S. company has been stalled by periodic artificial regulatory setbacks. Delays encountered by the U.S. company have jeopardized its chances to participate in a 2020 multi-year fuel supply tender for the KNPP.

France: France continues to maintain ownership shares in several major defense contractors (11.1 percent of Airbus, formerly EADS, shares; 11 percent of Safran shares; 62.3 percent of the Naval Group; and 25.7 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 procurement, especially at the local level. In 2012, the Italian parliament approved an anticorruption bill that introduced greater transparency and more stringent procedures to the public procurement process. Law 69/2015, an additional anticorruption law passed in 2015, has strengthened the powers of the National Anti-Corruption Authority. 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 2019 Anticorruption Report, Italian legislation to combat corruption is adequate, though enforcement needs to be strengthened. The report cites the lack of adequate whistleblower protection and the absence of laws regulating lobbying activities as key challenges for anticorruption enforcement. However, the report cited Italy's legislation as a model for all public entities to establish an internal reporting mechanism.

Poland: In the past, U.S. firms reported disappointment that “lowest cost” was the main criterion Polish officials used to award contracts. Polish officials often overlooked other important factors in bid evaluation, such as quality, company reputation, and prior experience in product and service delivery. A long-awaited change came on October 14, 2019, when the Polish President signed a new public procurement law. This law departs from the price criterion and allows a more collaborative approach between the government agency and the bidders, and rewards innovation. The law, which enters into force in 2021, aims to strengthen the position of contractors and subcontractors by increasing competition, simplifying procurement procedures, and making appeals against a contracting authority’s decision easier.

Defense companies operating in Poland have indicated that the Ministry of Defense may use statutory exclusions to bypass tendering procedures in signing contracts and sometimes requests significant offsets and technology transfers primarily associated with large-scale acquisitions.

Slovakia: Lock-in contracts, in which the government commits to procure a basic service and subsequently expands the contract to include additional services, continue to hamper the access of U.S. firms to public procurement, especially with regard to information technology services. U.S. firms have also reported discriminatory and burdensome documentation requirements for foreign suppliers to compete.

Slovenia: U.S. firms report short timeframes for bid preparation, tendering documentation that is difficult to understand, and opacity in the bid evaluation process as major impediments. Slovenia’s quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

INTELLECTUAL PROPERTY PROTECTION

As part of its Digital Single Market (DSM) Strategy, on September 14, 2016, the Commission issued a proposed Directive on Copyright in the Digital Single Market (Directive on Copyright) with the stated goal of addressing legal uncertainty for both right holders and users with regard to certain uses of copyright-protected works and other subject matter in the digital environment. The Directive on Copyright was published on April 17, 2019, and the Member States must transpose it by June 7, 2021. The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the transposition of the Directive on Copyright into national laws and will continue to engage with various EU entities as appropriate to address the equities of U.S. stakeholders.

In January 2016, a trademark directive (2015/2436) and regulation (2015/2424) entered into force. Some of the articles needed to be transposed by the Member States by January 14, 2019, and others must be transposed by January 14, 2023. United States continues to work with the EU and its Member States on trademark issues and is following implementation of the trademark package closely.

With respect to GIs, the United States remains highly troubled with the EU system that provides overbroad protection of GIs, adversely impacting the protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets. Regulation 1151/2012, for example, contains numerous problematic provisions with respect to the protection and enforcement of 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 common names, but also undermine access to the EU market for U.S. rights holders and producers. Moreover, as noted in the *Technical Barriers to Trade Section on Agriculture*

Quality Schemes above, the EU has granted protection as a geographical indication to the cheese names danbo and havarti, widely traded cheeses which are covered by international standards under the Codex.

As confirmed in the recital to Regulation 1151/2012, this measure also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce in their markets lists of specific EU GIs, according to EU rules, with often only limited due process requirements to safeguard existing producers, rights holders, consumers, importers, and other interested parties.

Regulation 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/06, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS). 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 their implementation and effects on bilateral trade. The United States does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such intellectual property (IP) rights should be evaluated independently on their merits, based on the unique circumstances of each country. The United States is also concerned by the EU's attempts to restrict common terms for wine in third country markets. The United States is carefully monitoring the implementation of each of these regulations.

The United States remains extremely concerned by the conduct and outcome of the 2015 World Intellectual Property Organization (WIPO) negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the Commission and by several EU Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights and depart from longstanding WIPO practice regarding consensus-based decision-making. Likewise, the resulting text—the Geneva Act of the Lisbon Agreement—raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms. The EU became a party to this Agreement in December 2019.

In addition, the EU approved amendments to its patent term restoration mechanism, Supplemental Protection Certificates (SPCs) (Regulation EC 469/2009). The amendment alters the exclusive rights conferred via an SPC through the introduction of an export and stockpiling waiver, thereby allowing the manufacture of pharmaceutical products, including generic pharmaceuticals and biosimilars, in the EU for the exclusive purpose of export to third countries as well as for stockpiling during the last six months of the validity of the SPC for the EU market. These amendments entered into force on July 1, 2019. The U.S. pharmaceutical industry has expressed concerns as to the possible ramifications of the SPC manufacturing waiver, particularly the possibility of the diversion of pharmaceuticals produced pursuant to the waiver either within Europe or in foreign markets. The United States is closely monitoring this matter.

Member State Measures

Member States generally maintain high levels of IP protection and enforcement. While some Member States made improvements in 2019, the United States continues to have concerns with respect to the IP

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 IP protection and enforcement, including through the annual Special 301 review process.

Austria: With regard to trade secrets, U.S. companies report gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles that limit efforts to effectively combat trade secret theft and misappropriation. The Austrian parliament adopted legislation, which entered into force on January 29, 2019, to strengthen protections and implement the EU Trade Secrets Directive. The law includes only civil law improvements; criminal penalty legislation is still pending. Austria's Anti-Piracy Association, which also represents U.S. audio-visual copyright holders, explained in its 2018 landscape report that law enforcement cannot act until a complaint is brought by the right holders in cases of IP infringements (*e.g.*, online piracy). As a result, enforcement continues to be seen as relatively weak.

Bulgaria: As a result of notable improvements on IP protection and enforcement, Bulgaria was removed from USTR's Watch List in the 2018 Special 301 Report. However, enforcement concerns remain with respect to inadequate prosecution efforts and insufficient criminal penalties.

France: The French government is increasing its efforts to combat online piracy. The Ministry of Culture (MoC) announced in September 2019 its intention to merge France's digital piracy watchdog Haute Autorité pour la Diffusion des Oeuvres et la Protection des Droits sur Internet (HADOPI) with the Higher Audiovisual Council (Conseil Supérieur de l'Audiovisuel) to create a more powerful authority (Arcom), capable of regulating websites and audiovisual and digital communications. The establishment of this new authority, which could proceed against illegal sites without first seeking authorization from French courts, will be included in a bill implementing the EU's Audiovisual Media Services (AVMS) Directive. This bill is expected to be submitted to the French Parliament in the second half of 2020, with a view to enforcement in 2021. France has also recently started introducing legislation to implement the EU Copyright Directive. Some stakeholders have raised issues about how France is implementing certain aspects of the Directive, and the United States will continue to monitor ways in which U.S. stakeholders may be impacted by this legislation.

Greece: Greece remained on the Watch List in the 2019 Special 301 Report. The United States acknowledges some improvements in IP protection and enforcement in Greece, including actions taken to address online piracy. However, inadequate IP enforcement continues to pose barriers to U.S. exports and investment. Key issues cited in the 2019 Special 301 Report include the continued widespread use of unlicensed software by the government and limited and inconsistent IP enforcement. Following elections in July 2019, the new government has committed to including purchases of licensed software in upcoming information technology tenders.

Greece's copyright agency launched a new enforcement mechanism in 2018 to address online piracy, which fast tracks requests by right holders to take down unlicensed content. This mechanism became operational on September 3, 2018, and issued its first takedown notices on November 7, 2018. Since September 2018, Greece has used this mechanism in eleven decisions that ordered either the removal of the infringing content or the takedown of the link to such websites.

Poland: Stakeholders continue to identify copyright piracy online as a significant concern in Poland and noted inconsistent enforcement on the part of regional police forces and backlogs in the Polish courts.

Romania: Romania remained on the Watch List in the 2019 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 online pirate sites are reportedly hosted or registered in Romania. Criminal IP enforcement remains generally inadequate, with

questions arising regarding Romania's commitment to resolute enforcement, reflected in a lack of meaningful sanctions. Low penalties for IP violations impede investigations and do not offer any meaningful deterrent to further IP crimes. Romania lacks an effective and timely mechanism for right holders to submit takedown requests against online markets and hosting platforms for infringing material. Additional human resources are also needed to increase enforcement in Romania, such as increased hiring and training of law enforcement and prosecutors.

Spain: Spain was the subject of a Special 301 Out-of-Cycle Review from 2013 to 2017, after it was removed from the Watch List in the 2012 Special 301 Report. In 2015, Spain took several positive legislative steps, including amending its civil and criminal copyright laws. In December 2015, Spain's Prosecutor General also issued a new circular with respect to copyright piracy over the Internet. Spain implemented these amendments and saw piracy rates fall for the first time in 2017. However, online piracy and camcording remain a concern. Moreover, counterfeit sales in physical markets are a continuing concern, including reported widespread sales by informal street vendors in Barcelona and other major cities, such as the Els Limits de La Jonquera market in Girona, Catalonia. The Spanish government set up an inter-ministerial and intragovernmental task force to address the issue of physical markets in December 2019. The new Madrid municipal government has also taken steps to curtail street sales in the capital.

In December 2018, Spain updated its Trademark Act via executive order to allow customs officials to seize counterfeit goods determined to be destined for distribution in Spain before their official entry into the country. In February 2019, special anti-counterfeiting regulations as to pharmaceuticals came into effect. The United States will continue to monitor whether these changes improve IP protection and enforcement in Spain.

Sweden: Sweden continues to grapple with widespread online piracy. Government enforcement efforts have shown positive results, and right holders report that court cases to enforce their rights are successful in the vast majority of cases. Meanwhile, levels of illegal streaming remain high. As a result, the movie, television, and live sports telecast industries continue to lose revenue. However, legal sales of music and film have increased dramatically in recent years, in part because of Swedish enforcement efforts and increased awareness of the importance of IP to Sweden's economy and culture. In addition, the Patent and Market's Court, Sweden's IP court, issued a ruling in October 2018, ordering a major internet service provider, Telia, to take action against four IPR-infringing sites.

SERVICES BARRIERS

Telecommunications

Electronic Communications Code

The EU Electronic Communications Code (EECC), which was adopted in 2018, regulates the telecommunications sector and includes rules on network access, spectrum management, communication services, universal service, and institutional governance. Member States must conform their national telecommunications law to the requirements of the EECC by December 21, 2020. Regulation of the telecommunications sector is also addressed by the e-Privacy Directive, the Telecoms Single Market Regulation, the Roaming Regulation, and the Radio Spectrum Decision. 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.

The EECC extends European telecommunications regulations to "over the top" (OTT) Internet-enabled services, such as voice, messaging, and other communications applications. Most of the obligations in the

EECC apply to “number-based” Internet services that enable communications with mobile devices and landlines. These obligations address requirements relating to access to emergency services, duration of contracts, quality of service, number portability, and switching rules for service bundles. All covered Internet services, including those that do not use public numbering, are bound by rules on security and integrity of services that govern their risk management strategies and their reporting of security incidents to competent authorities.

U.S. suppliers have expressed significant concerns with the expanded scope of EU telecommunications law and have highlighted that Internet services face low barriers to entry by new competitors, while traditional telecommunications services providers enjoy high barriers to new entry and little direct competition, thus justifying asymmetrical regulation. U.S. firms are concerned that the application of rules designed for traditional telecommunications service providers to OTT service providers will hamper market access. In addition, this extension of NRA authority to Internet services raises concerns because most traditional telecommunications services suppliers historically serve one or a limited number of Member State markets, whereas most Internet “interpersonal communications services” are available in every Member State, thereby potentially subjecting them to conflicting NRA jurisdictions.

Regulation on Privacy and Electronic Communications

In January 2017, the Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The Commission has stated that the proposed Regulation will align rules for telecommunications services in the EU with the General Data Protection Regulation (GDPR) and cover the confidentiality of business-to-business communication and communication between individuals. While it would remove existing inconsistencies between Member State rules, the new regulation also would expand regulatory coverage intended for traditional telecommunications services providers to OTT Internet-enabled services.

U.S. suppliers have expressed concerns that, although the proposed regulation is supposed to align the specific rules for telecommunications services with the GDPR, it actually may lead to additional and potentially conflicting requirements. In late 2017, the European Parliament adopted its final amendments to the proposed Regulation on Privacy and Electronic Communications and voted on a mandate for the trilogue (the formal negotiation that will take place once the European Council finalizes its version of the legislation). However, as of the end of 2019, the European Council had not yet reached consensus on the proposal.

International Termination Rates

One of the main cost components of an international telephone call from the United States to an EU country is the rate a foreign telecommunications operator charges a U.S. operator to terminate the call on the foreign operator’s network and deliver the call to a local consumer. The WTO General Agreement on Trade in Services (GATS) Telecommunications Reference Paper, as adopted by the EU, includes disciplines designed to ensure that the charge for terminating a call on a network of a major supplier (which in most countries is the largest or only fixed-line telecommunications supplier) is cost-oriented. This ensures that a major supplier is not able to gain an unfair competitive advantage from terminating foreign or competitive carriers’ calls. It also helps to ensure that U.S. carriers can offer reasonable and competitive international rates to consumers located in the United States. Termination rates for both fixed and wireless traffic should be set in relationship to the costs of providing termination, as would be reflected in a competitive market. Where competition does not discipline the costs of termination services, governments should ensure that the termination rates charged by its operators are not unreasonably higher than cost.

Most of the EU Member States permit major suppliers to charge different rates for the termination of international traffic originating outside of the EU, or in some cases outside the European Economic Area (EEA, which is comprised of the EU plus Iceland, Liechtenstein, and Norway), than for international traffic between sovereign states within the EU or EEA. A few Member States prohibit such differentiation, including Denmark, Romania, Sweden, and the United Kingdom, although Romania and Sweden are both considering changing their rules to allow for this type of differentiation. Several other Member States, including Austria, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, and Spain, allow for different rates based on reciprocating rates in the other country. In addition, a number of suppliers in the remaining Member States are charging U.S. suppliers differentiated rates that are higher than the rates charged for terminating traffic originating in one of the other Member States. These Member States include Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, and Slovenia.

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. The EECC requires the Commission to adopt by December 31, 2020, legislation that sets a maximum rate for termination services. The United States has requested the Commission include in this legislation a bar on differentiation of termination rates on the basis of the national origin of the call.

Roaming

Germany: In November 2017, the German government imposed a regulation requiring that any devices that will be permanently located in Germany and that use a foreign telephone country code be registered with the telecommunications regulator (BNetzA). This regulation raises concerns for U.S. companies providing global machine-to-machine and Internet-of-Things services because it appears to impose additional requirements that will not apply to domestic providers of such services.

Audiovisual Services

Audiovisual Media Services Directive

On November 6, 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted. Member States were given 21 months to transpose the amendments into national legislation. The amendments updated the AVMSD to reflect developments in the audiovisual and video on-demand markets.

The original AVMSD established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so, as discussed below. The 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 new rules include provisions that would impose on Internet-based video-on-demand providers a minimum 30 percent threshold for EU content in their catalogs and require that they give prominence to

EU content in their offerings. The new AVMSD 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 EU works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the AVMSD to video-sharing platforms that tag and organize content, which has raised concerns among social media platforms.

Satellite and Cable Directive

The 1993 Satellite and Cable Directive (SatCab) governs certain satellite broadcasting and cable retransmission copyright issues. It was enacted to promote cross-border satellite broadcasting of programs and their cable retransmission from other Member States and to remove obstacles arising from disparities between national copyright provisions. Under SatCab's country-of-origin principle, the satellite broadcasting of copyrighted works requires the authorization of the rights holder in the Member State of the uplink station, and such rights may only be acquired by agreement.

In 2016, the Commission carried out a Regulatory Fitness and Performance review of the 1993 SatCab, with the aim of enhancing cross-border access to broadcasting and related online services across the EU. This review was followed by a Commission proposal – COM (2016) 594 – for a “Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes” (Broadcasting Regulation), on which the Commission, EU Member States, and the European Parliament reached political agreement in December 2018. The proposed Broadcasting Regulation seeks to extend the country-of-origin principle to certain online services of broadcasters, a development strongly opposed by the U.S. film and commercial television sectors. The Commission announced on December 13, 2018, that the political agreement limited the application of the country-of-origin principle to radio programs, news/current affairs programs, and broadcasting organizations' own fully financed productions. U.S. studios are particularly concerned that the proposed regulation would interfere with the ability of rights holders to continue licensing on a country-by-country basis and to tailor audiovisual content for specific cultural audiences at different price points. There is also increasing concern about the proposed expansion of mandatory collective rights management of cable retransmission to other equivalent digital retransmissions, which commercial producers view as another encroachment on freedom to contract.

Member State Measures

Several Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

France: France continues to apply the AVMSD and other content laws in a restrictive manner in order to promote local industry. France's implementing legislation, approved by the Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to that of EU origin must include original French-language content. 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 AVMSD 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 10 most played French songs on a station account for less than 50

percent of the songs played are they counted towards the quota. France's Broadcasting Authority, Conseil Supérieur de l'Audiovisuel (CSA), 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.

In September 2019, the Ministry of Culture confirmed the contents of a draft law implementing the AVMSD, which should include a new requirement for video-on-demand services such as Netflix and Amazon to increase their investment in French content creation from the current 10 percent to 16 percent of revenues. The new bill, to be presented to the French Parliament in the second half of 2020, should merge France's anti-piracy and audiovisual authorities (respectively Hadopi and the Higher Audiovisual Council) into a new body to sanction digital platforms not abiding by requirements on French and European programming.

Italy: The Italian Broadcasting Law, which implements EU regulations, provides that the majority of television programming time (excluding sports, news, game shows, and advertisements) be EU-origin content. In 2017, Italy adopted new legislation raising the quota for EU content to 53 percent in 2019, 56 percent in 2020, and 60 percent in 2021. The law also sets mandatory quotas for Italian language content aired between 6:00 p.m. and 11:00 p.m.

Poland: Television broadcasters must devote at least 33 percent of their broadcasting time each quarter to programming originally produced in the Polish language, except for information services, advertisements, telesales, sports broadcasts, and television game 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 game 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. 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 airtime 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 April 2016, the amendment to Act on Transmission, Retransmission and Telecommunications has imposed quotas on Slovak music, whereby private radio stations must allocate at least 25 percent of airtime per month to Slovak music and state-run radio at least 35 percent. In addition, at least 20 percent of the Slovak songs must be new production (*i.e.*, recorded within the past five years). Similarly, quotas on European and independent production exist for private TV channels and are also imposable on private radio stations, per special request. Quotas on the maximum time allocated to paid advertisement are also in place for private (and public) radio and TV channels.

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 addition, 60 percent of this allocation should be directed towards productions in any of Spain's official languages. This also applies to digital terrestrial channels.

In 2010, the Autonomous Community of Catalonia passed the Catalan Cinema Law, legislation that requires distributors to include the regional Catalan language in any print of any movie released in Catalonia that had been dubbed or subtitled in Spanish (but not any film distributed in Spanish). The law also requires exhibitors to exhibit such movies dubbed in Catalan on 50 percent of the screens on which they are showing. In 2012, the 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. As of December 2019, the law had not been amended, nor had the issue been brought before the CJEU. Although the Catalan Cinema Law technically came into force in January 2011, the Catalan regional parliament has not yet approved a regulation to implement the law. In the absence of the regulation, in 2012 the regional government and major movie studios signed an agreement to dub 20 films in Catalan annually, in addition to 20 independent films, with dubbing financed by the regional government.

In 2015, the Spanish government awarded six digital terrestrial television broadcasting licenses through a public tender process. U.S. investors were unable to participate directly in this tender process due to restrictions on foreign ownership. U.S. companies have complained about lack of reciprocity in their efforts to purchase portions of Spanish broadcasting companies. The United States continues to engage on these issues with the Spanish government.

Video-on-demand services in Spain must reserve 30 percent of their catalogs for European works (half of these in an official language of Spain) and contribute 5 percent of their turnover to the funding of audiovisual content.

Legal Services

Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Greece, Hungary, Latvia, Lithuania, Malta, and Slovakia require EU or EEA nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Member State Measures

Bulgaria: The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the partners has to be registered both in Bulgaria and in another Member State if the local partnership is to use an internationally recognized name.

Hungary: U.S. lawyers may provide legal services only under a "cooperation agreement" with a Hungarian law firm and may only provide information to their clients on U.S. or international law.

Accounting and Auditing Services

The Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. This interpretation has hampered movement of experienced professionals and inhibited Member States from participating in the growing movement towards mutual recognition in this profession. The United States will continue to advocate for Member States to take into account experience of U.S. certified public accountants acquired outside of the EU.

Member State Measures

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

Retailing Services

Member State Measures

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

Hungary: In 2018, the Hungarian government passed a law that requires mandatory tax audits for any company with total revenue more than \$220 million that has not reported an after-tax profit for two consecutive years, which mainly affects large retail chains. A 2018 modification of the law on construction permits that requires investors to obtain a construction permit and government approval before converting any building into a retail shop exceeding 400 square meters or remodeling an existing retail unit also affects retail chains. Many industry representatives are concerned that these new laws may be used to unfairly favor domestic retailers in the face of competition from large foreign retail firms.

Romania: In July 2016, Romania passed a law requiring large supermarkets to source from the local supply chain at least 51 percent of the total volume of their merchandise in meat, eggs, fruits, vegetables, honey, dairy products, and baked goods. This law applies to high-volume supermarkets with more than €2 million (\$2.3 million) in annual sales, affecting all major chains. The law also bans food retailers from charging suppliers for any services, including on-site marketing services, thereby preventing producers from influencing how stores market or display their products and injecting greater unpredictability into the business environment. The government has not yet implemented the 51 percent provision by passing the required secondary legislation, although it announced its intention to do so even after the Commission notified Romania of possible infringement proceedings on February 15, 2017. The Romanian parliament has yet to finalize the implementing legislation.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization

The free flow of data has been critical to the continued growth of digital trade. The United States monitors and works to eliminate data localization requirements, which are unfortunately a growing global trend. The GDPR restricts the transfer of the personal data of EU data subjects (any natural or legal person whose personal data is being processed) outside of the EU, except to specific countries that the EU has determined provide adequate data protection under EU law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules. Restrictions on the flow of data have a significant effect on the conditions for the cross-border supply of numerous services and for enabling the functionality embedded in intelligent goods (*i.e.*, smart devices).

The United States remains concerned that the implementation and administration of the GDPR create disproportionate barriers to trade, not only for the United States, but for all countries outside of the EU. 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 receive data from suppliers in the EU. Although the United States has received a determination of partial adequacy from the EU (*for further information on the EU-U.S. Privacy Shield Framework, see below*), there are many other countries, including India and Korea, that have expressed interest in obtaining an adequacy determination to facilitate the exchange of data with the EU. In 2019, the EU concluded only one adequacy decision, adopting on January 23, 2019, an adequacy finding for Japan. 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 2019, the validity of the adequacy decision on the EU-U.S. Privacy Shield Framework was the subject of a case before the EU's General Court, and the use of standard contract clauses was the subject of a case before the CJEU.

EU-U. S. Privacy Shield Framework

The EU-U.S. Privacy Shield Framework (the Framework) provides U.S.-based organizations a mechanism to comply with EU data protection requirements when transferring personal data from the EU to the United States in support of transatlantic commerce. As of December 2019, over 5,000 U.S. companies had completed their certification to the Framework. In September 2019, the third annual review of the Framework was held in Washington, DC. U.S. participants included officials from the Department of Commerce, the Federal Trade Commission, the Department of State, and other federal agencies. The Commission's Directorate General for Justice led the EU delegation, with active participation from a select group of Member State Data Protection Authorities (DPAs). The U.S. Secretary of Commerce and the EU Commissioner issued a joint press statement expressing their shared interest in the success of the Framework and a commitment to continue collaboration. The Commission's report on the third annual review concluded that the Framework continues to provide an adequate level of privacy protection under EU law and that U.S.-EU collaboration over the past year had further enhanced the successful functioning of the Framework.

General Data Protection Regulation

The GDPR took effect on May 25, 2018, replacing the 1995 Data Protection Directive (DPD). Under the GDPR, the Commission and Member State DPAs can impose fines of up to four percent of annual global revenue on firms that breach the new data protection rules. For multinational corporations, such fines could amount to billions of dollars. The GDPR also created a new European Data Protection Board. The Board is tasked with minimizing disparities in implementation and enforcement between individual Member State DPAs, and it is entrusted to resolve disputes between DPAs.

Because of the EU's assertion of extraterritorial jurisdiction for the GDPR, as well as the GDPR's broad impact on many areas of the economy, U.S. companies have expressed concerns that there remains a need for clear and consistent guidance in the implementation and any enforcement of the GDPR. It is already clear that the impacts of the GDPR can have an extensive effect beyond the borders of the EU. For example, the WHOIS registry of the contact information for website domain names is a critical tool that has been used for cybersecurity and intellectual property infringement purposes by companies and security researchers as well as by law enforcement officials. Implementation of the GDPR so far has led to curtailed access to WHOIS registration information, having a significant effect on IP rights enforcement efforts and the ability of legitimate rights holders to take action against infringers and bad actors, including those responsible for malware, botnet attacks, and phishing schemes. The GDPR also is affecting longstanding collaborations among U.S. and EU researchers in numerous areas of critical scientific research. In the absence of EU guidance clarifying provisions that allow data sharing for research purposes, EU institutions

have either stopped or limited sharing of relevant data, which has significantly impeded ongoing research cooperation. The United States continues to strongly encourage the EU to work closely with companies and organizations, both in the EU and those outside the EU, that are impacted by the GDPR to resolve implementation and enforcement issues in a reasonable and consistent manner.

France: On May 21, 2015, the French DPA (CNIL) ordered one U.S. search supplier to remove information under a “right to be forgotten” matter from all its domains on a worldwide basis. On September 24, 2019, the CJEU ruled that the search supplier is not required to carry out the CNIL order on all versions of its search engine, but rather only on the versions of the search engine that correspond to Member States. The CJEU opinion also provided that the search supplier can be required to use measures to prevent an Internet user in one of the Member States from accessing material which is the subject of the CNIL order. On September 24, 2019, CNIL issued a statement on the CJEU opinion confirming that CNIL understood that the CJEU had limited the scope of such orders to apply only to search results carried out from the territory of Member States but that the CJEU opinion confirmed that CNIL has the authority to force a search supplier to remove specific results on “all versions of the search engine if it is justified in some cases to guarantee the rights of the individual concerned.” Although the result of the CJEU opinion in this matter is reassuring, the United States remains concerned that the CJEU opinion provides some basis, however narrow, for Member State DPAs to assert an authority to restrict what non-EU businesses and individuals would be able to access on the Internet. This result would create a troublesome precedent, empowering governments to apply their domestic law extraterritorially on the Internet, and would create significant market uncertainty for businesses worldwide.

Interactive Computer Services

Cybersecurity certification

On April 17, 2019, the EU adopted the Cybersecurity Act, which gives new powers to the EU Agency for Network and Information Security (ENISA) to coordinate Member States in the event of a large cyber security attack. It also tasks ENISA with developing a voluntary EU-wide certification schemes for ICT products, services, and processes, setting assurance levels of “basic,” “substantial,” and “high.” Although the schemes are voluntary, some observers are concerned that the result could be a *de facto* mandatory certification requirement. Furthermore, the Commission has said it will assess by December 31, 2023, whether some schemes should become mandatory. Following the entry into force of the Cybersecurity Act on June 27, 2019, the Commission has requested ENISA to prepare a candidate cybersecurity certification scheme to serve as a successor to the existing SOG-IS Mutual Recognition Agreement.

Platform Regulation

On June 20, 2019, the EU adopted a regulation on platform-to-business services and online search services. The law will go into effect on July 12, 2020. The new law requires online intermediaries to provide redress mechanisms and meet aggressive transparency obligations concerning delisting, ranking differentiated treatment, and access to data. Among other obligations, covered service providers would have to disclose “criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms” associated with rankings of search results. U.S. companies have raised concerns that these requirements could create market access barriers and potentially compromise trade secrets that are critical to their provision of such services.

Proposed Regulation on Preventing the Dissemination of Terrorist Content Online

In September 2018, the Commission published a proposal for regulating removal of online terrorist content from Internet platforms. The new rules would impose a one-hour deadline for platforms to remove content

following an order from national authorities and require platforms to take proactive measures to ensure that the platforms are not misused for the dissemination of terrorist content online. Although the goal of removing and minimizing terrorist content online is legitimate, the one-hour deadline coupled with proposed penalties of up to four percent of a company's global revenues would create significant uncertainty for many U.S. services suppliers participating in EU markets. The proposed regulation is currently in trilogue negotiations.

France: On July 9, 2019, the National Assembly approved a draft bill on combating online hate speech. The draft bill is currently before the Senate. The draft bill would require large platform operators to remove or block access, within 24 hours of notification, of content manifestly inciting hate on the basis of race, religion, ethnic origin, gender, sexual orientation, or disability. This requirement would be enforced by CSA, France's audiovisual broadcasting regulator, and fines could be up to four percent of the global revenues of platform operators. The CSA would also determine the list of statistics that operators would need to make public on the number of notifications received and human and financial resources provided to handle illegal content. The bill would also simplify the notification procedure by introducing a "notification button" common to all platforms and require social media companies to have legal representation in France.

Germany: In January 2018, the Improve the Enforcement of Rights in Social Networks Act (NetzDG) went into effect in Germany. The NetzDG law mandates the removal of "obviously illegal" content within 24 hours of notification and other illegal content within 7 days of notification and provides for fines as high as €50 million (\$57 million) for non-compliance.

Aggregation Services

Over the past several years, certain Member States have adopted or considered copyright-related measures requiring remuneration or authorization for certain content associated with online news aggregation services. Specifically, the measures would require news aggregators, which provide short excerpts ("snippets") of text from other news sources and images, to either remunerate those other sources or obtain authorization for their use. France has also introduced a similar measure with respect to digital images.

On April 17, 2019, the Directive on Copyright was published. Member States will need to transpose it by June 7, 2021. The Directive contains a new neighboring right for press publishers that extends 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, support this provision, online news aggregators, including but not limited to U.S. service suppliers, have raised concerns regarding the potential impact of this provision of the Directive (in part because of their experiences with the German and Spanish laws described below). These measures and similar proposals are intended to address publishers' and visual artists' challenges in adapting to the digital marketplace, but also have an effect on suppliers of news aggregation services. U.S. stakeholders have expressed a range of competing views on these issues. Measures that disproportionately affect only one group of foreign-based service suppliers in the digital ecosystem may exacerbate those challenges to the detriment of all participants in the marketplace.

France: In 2017, the Freedom of Creation Act, a set of measures designed to bolster suppliers of cultural products through subsidies and other governmental interventions, went into effect. The so-called "thumbnail amendment" (Article 30) requires "automated image referencing services" to remunerate French rights collecting societies for the right to "reproduce and make available" an image. Individual artists or photographers cannot opt out of this licensing regime. France's main copyright collecting societies have pursued negotiations for the payment of royalties for the reproduction and making available of photographs and images in thumbnails with foreign search engines and social networks. There are

continuing stakeholder concerns regarding the legal uncertainty created by the law and its effect on innovative businesses in France.

Germany: In 2013, Germany adopted a law (Leistungsschutzrecht für Presseverleger) that created a neighboring right for press publishers that permitted news publishers and news aggregators to negotiate terms of individual licenses for the making available of articles and illustrations (or parts thereof) from news publications. In September 2019, the CJEU ruled that the law was invalid, with retroactive effect, because Germany did not properly notify the EU Commission before its adoption.

Spain: A 2014 amendment to the Spanish intellectual property law (Article 32.2), which took effect in 2016, imposed upon commercial news aggregators a mandatory compulsory license and compensation regime for the use of text fragments of news publications. News aggregators are required to remunerate publishers via a rights management organization for the use of “non-significant fragments” of their news publications. The remuneration rate is negotiable via the collective management organization, but there are no means by which a covered news publisher can waive this right or independently license directly with a news aggregator should it so desire (*e.g.*, if the news publisher wishes to allow readers to find and access such publications through such aggregators at a different rate). Faced with this measure, at least one leading U.S. supplier suspended its news aggregation service in the Spanish market.

Other Issues

Market Surveillance and Mutual Recognition: “The Goods Package”

In December 2017, the Commission initiated a two-part legislative proposal (the Goods Package) aimed at improving product safety across the EU: (1) a draft regulation on compliance and enforcement (market surveillance); and (2) a draft regulation on mutual recognition for the EU Single Market. The Commission notified the Goods Package to the WTO in February 2018. In April 2019, the regulation on compliance and enforcement was approved by the Member States and the European Parliament. It will go into effect in July 2021.

The U.S. Government and stakeholders have expressed concern about a provision contained in Article 4 of the regulation on compliance and enforcement. This article stipulates that a product may be made available on the EU market only if the manufacturer appoints an economic operator based in the EU, who will be responsible for maintaining applicable compliance documentation and cooperating with market surveillance authorities to furnish that information, as necessary. The U.S. Government and stakeholders have raised concerns that Article 4 will disproportionately disadvantage SMEs selling to the EU. In addition, online platforms and logistics providers who act as fulfillment houses for sellers will be liable for compliance on behalf of companies selling products through them. The United States will continue to raise concerns about Article 4 with the EU.

Digital Services Tax

On March 21, 2018, the Commission proposed a directive to levy an interim tax on digital services to the following types of services: (1) placing advertising on a digital interface, where the advertising appears on a user’s device in the EU; (2) making available a multi-sided digital interface that allows users to find and interact with other users, and which may facilitate the provision of underlying supplies of goods or services directly between users, where a user is located or based in the EU; and (3) the transmission (*e.g.*, sale) of data collected about users and generated from users’ activities on digital interfaces, where the user is in the EU. The proposed tax would apply to companies with annual worldwide revenues exceeding €750 million (\$849 million) and revenues within the EU exceeding €50 million (\$57 million). On March 12, 2019, with several EU Member States firm in their opposition to the Commission proposal, EU finance ministers

decided to abandon the effort to reach agreement on an EU-wide digital services tax. At her confirmation hearing in October 2019, Commission Executive Vice President Margrethe Vestager voiced support for the effort currently underway within the OECD to develop a global consensus on issues related to digital taxation but said that the Commission would once again propose an EU-wide proposal if a global solution was not achieved by the end of 2020.

The United States opposes proposals by any country to single out digital companies. Such proposals are based on an unprincipled and unsupported distinction between digital companies and non-digital companies. In addition, U.S. companies have expressed concerns that the specific services included in the proposal along with the thresholds for global and EU-wide revenues appear to target almost exclusively U.S. companies and so would have a discriminatory effect on U.S. suppliers participating in EU markets.

Austria: On October 26, 2019, the Austrian President signed into law a five percent tax on online advertising revenue for companies with global annual revenues from all sources of over €750 million (\$849 million) and advertising revenues of over €25 million (\$28 million) in Austria. The law contains language that exempts the Austrian state broadcaster ORF from this tax. As a result, the measure appears to only affect a small number of large U.S. companies. It entered into force on January 1, 2020.

Czech Republic: On October 30, 2019, the Ministry of Finance published an updated draft proposal of the country's digital services tax bill. The proposal would levy a seven percent tax on revenues from online advertising, online marketplace services, and services transmitting user data for companies with global annual revenues of more than €750 million (\$831.5 million) and Czech-based revenue of more than 100 million crowns (\$4. million). On February 5, 2020, the budget committee of the lower house of the Czech parliament decided to suspend debate on the proposed digital services tax. It is unclear when the debate will resume.

France: On July 24, 2019, France enacted a digital services tax that imposes a three percent tax on revenue generated from sales of targeted digital advertising, online marketplaces, and the sale of private data for purposes of targeted advertising. The tax applies to companies that generate, from providing the taxable services, global annual revenues over €750 million (approximately \$849 million) and revenues over €25 million (\$28 million) in France.

The French Tax Authority (FTA) is responsible for drafting guidelines for companies falling within the scope of the tax. On October 17, 2019, the FTA published draft guidelines for public comment and is expected to publish a second, definitive version of the guidelines during the first quarter of 2020. The first of two payments on 2019 taxes was due November 25, 2019, and the second will be due in April 2020.

On July 10, 2019, USTR initiated an investigation of France's digital services tax under Section 301 of the Trade Act of 1974. Section 301 of the Trade Act gives the USTR broad authority to investigate and respond to a foreign country's unfair trade practices. On December 2, 2019, USTR issued a report finding that France's digital services tax is unreasonable or discriminatory and burdens or restricts U.S. commerce. The United States will continue to engage with France on this issue. The United States will also continue its efforts with other countries at the OECD to reach a multilateral agreement to address the challenges to the international tax system posed by an increasingly digitized global economy.

Italy: Italy's law applies a three percent tax to revenues from targeted advertising and digital interface services, subject to an annual threshold of €750 million (approximately \$849 million) in global revenues for all services and €5.5 million (approximately \$6.1 million) in in-country revenues for covered services. The digital services tax applies as of January 1, 2020, but the payment will not be due until February 16, 2021.

Spain: In January 2020, Spain published a revised version of its digital services tax bill that would impose a three percent tax on revenues from targeted advertising and digital interface services, subject to an annual threshold of €750 million (approximately \$849 million) in global revenues for all services and €3 million (\$3.3 million) in in-country revenues for covered services. Tax liability would begin when the measure is passed. The first tax payment would not be due until the end of 2020.

United Kingdom: In October 2018, the United Kingdom announced that it would introduce a digital services tax. The UK proposal would impose a two percent tax on the revenues from digital services including search engines, social media platforms, and online marketplaces. The UK proposal would only apply to businesses that generate revenues of at least £500 million (approximately \$664 million) globally from the covered services, and it exempts the first £25 million (approximately \$33 million) in revenues generated in the United Kingdom from the tax. The UK proposal also promises to devise at a later time a “safe harbor” that will adjust the tax for those businesses that have very low profit margins. Final passage of the legislation necessary to implement the tax was expected in March 2020. However, it has been delayed. Nevertheless, the United Kingdom has reaffirmed its intention to implement the tax.

INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company’s ultimate ownership. Laws and regulations pertaining to the initial entry of foreign investors, however, are largely still the purview of individual Member States. As discussed below, the policies and practices of the EU and its Member States can have a significant impact on U.S. investment.

Member State Measures

Bulgaria: The Offshore Company Act lists 28 activities that are prohibited for companies registered in offshore jurisdictions with more than 10 percent offshore participation, including government procurement, natural resource exploitation, national park management, banking, and insurance. The law, however, allows offshore companies to conduct such activities if the physical owners of the parent company are Bulgarian citizens and known to the public, if the parent company’s stock is publicly traded, or if the parent company is a media publisher and has declared its physical owners in a prescribed manner.

While Bulgaria generally affords national treatment to foreign investors, there are some reports of discrimination against U.S. investors by government officials. Investors more often cite general problems with corruption, rule of law, frequently changing legislation, and weak law enforcement. Bulgaria dropped six places from last year to 77th place out of 180 countries surveyed in Transparency International’s Corruption Perception Index for 2018 and continues to be the lowest-ranked EU member state. Stakeholders continue to express concerns about the non-payment of contractual obligations as a deterrent for investment.

In 2019, the Bulgarian government stepped up efforts initiated in 2018 to renegotiate the long-term power purchase agreements of two large U.S. investors in the domestic energy sector. While initial public threats of contract abrogation have since subsided, the companies are experiencing significant pressure to give up compensation they were contractually promised when they made their initial investments. The Bulgarian government has cited high domestic energy costs, along with the European Commission’s state aid regulations, as justifications for its actions. The European Commission, however, has not formally ruled on the issue. Furthermore, the two companies made their investments before Bulgaria acceded to the EU. The United States has engaged extensively on the issue, highlighting the importance of respecting the sanctity of contracts and the risks of a negative impact on Bulgaria’s investment climate. To date, the

government has not taken any concrete adverse action in respect to the contracts. Furthermore, the Bulgarian government has stressed its commitment to resolving the dispute via good faith negotiations.

The natural gas market in Bulgaria remains largely closed to competition, with gas supplied almost exclusively by Russia's Gazprom under a long-term contract and domestic distribution dominated by Bulgaria's state-owned companies. These conditions have led to antitrust actions by the European Commission against the relevant state-owned companies, accusing them of conspiring to restrict would-be competitors from accessing key gas infrastructure in Bulgaria. With respect to the supply of gas into Bulgaria from foreign markets, the introduction of entry-exit tariffs on October 1, 2017, has complicated entry into the market for new players, including for U.S.-sourced liquefied natural gas. The higher tariff does not apply to Russia's Gazprom, raising concerns about discrimination. However, 2019 saw significant progress toward construction of the gas Interconnector Greece-Bulgaria, which holds the promise of introducing competition into Bulgaria's gas market.

Croatia: U.S. companies doing business in Croatia complain that their operations are negatively affected by inefficient and unpredictable judicial processes. Disputes between U.S. investors and Croatian partners or government authorities can take multiple years to resolve. U.S. investors have reported that local government officials who take action against their assets in violation of court orders are rarely, if ever, penalized. They similarly complain that foreign investors are prejudiced by local corruption, alleging judicial bias in favor of local parties who have relationships with judges and judicial employees. While investors of all nationalities (including Croatians) cite judicial inefficiency and corruption as common obstacles to doing business in Croatia, the perception that non-local litigants do not enjoy impartial access to the courts creates a further barrier to investment.

Cyprus: Cypriot law imposes restrictions on the foreign ownership of real property and construction-related businesses. Non-EU residents may purchase no more than two independent housing units (apartments or houses) or one housing unit and a small shop or office. Exceptions are available for projects requiring larger plots of land but are difficult to obtain and rarely granted. Only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company. Non-EU residents or legal entities may bid on specific construction projects but only after obtaining a special license from the Cypriot Council of Ministers.

Non-EU entities are prohibited from investing in the production, transfer, and provision of electrical energy. Individual non-EU investors may not own more than 5 percent of a local television or radio station, and total non-EU ownership of a local TV or radio station is restricted to a maximum of 25 percent. Non-EU entities cannot invest in private tertiary education institutions. The provision of healthcare services on Cyprus is also subject to certain restrictions, applying equally to all non-residents. Finally, the Central Bank of Cyprus's prior approval is necessary before any person or entity, whether Cypriot or foreign, can acquire more than 9.99 percent of a bank incorporated in Cyprus.

Greece: Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

Italy: Some U.S. companies claim to have been targeted adversely by the Italian Revenue Authority by virtue of the fact that they engage in international operations. Tax rules in Italy change frequently and are interpreted inconsistently. U.S. companies report long delays in receiving VAT refunds to which they are legally entitled. Tax disputes are resolved slowly, and initial findings are frequently reversed, which reduces certainty and increases compliance costs. U.S. oil and gas companies have also faced lengthy delays in obtaining necessary permits from the Italian government for exploration and drilling.

Under EU law and OECD obligations, Italy is generally obliged to provide national treatment to U.S. investors established in Italy or in another Member State. Exceptions include access to government subsidies for the film industry (limited to Member States), capital requirements for banks domiciled in non-EU countries, and restrictions on non-EU-based airlines operating domestic routes. Italy also has investment restrictions in the shipping sector.

Latvia: The judicial system in Latvia can present significant challenges to investors. Insolvency proceedings continue to present serious problems. Cases often take several years to resolve, and there have been reports of large-scale abuse by both insolvency administrators and bad-faith creditors who have manipulated the proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice serious concerns about the duration of civil cases, while the nature and opacity of judicial rulings have led some investors to question the fairness and impartiality of some judges.

In 2017, Latvia enacted amendments to its Law on Land Privatization 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: Laws passed in 2016 regulating wind farm construction caused sharp valuation drops in wind energy sector assets, more than half of which were owned by foreign investors, and undercut new investments in wind energy infrastructure.

The Polish tax system underwent many changes in 2017 and 2018, with the aim of increasing budget revenues and compliance. More aggressive tax auditing and collection in some cases has led to delays in re-approval of transfer pricing arrangements, changes in categorization of goods for purposes of using bonded warehouses, possible incorrect collection of excise tax, and unclear guidance on application of the U.S. double taxation treaty for stock options. In addition, an exit tax on both individual and corporate assets came into force on January 1, 2019, and may adversely affect foreign investors.

Pursuant to the Broadcasting Law, a television broadcasting company may only receive a license if the voting share of foreign owners does not exceed 49 percent and if the majority of the members of the management and supervisory boards are Polish citizens and hold permanent residence in Poland. In the insurance sector, at least half of the management board members, including the chair and the member responsible for risk management, must speak Polish.

The current government has expressed a desire to increase the percentage of domestic ownership in some industries such as banking and retail, which have large holdings by foreign companies, and has employed sectoral taxes to advance this aim. Stakeholders have alleged that two new laws in the healthcare sector discriminate against foreign firms, namely hospital reform favoring large public hospitals for public reimbursement contracts and a law introduced in 2017 aimed at restricting ownership of pharmacies to licensed pharmacists in an effort to force out pharmacy chains.

Romania: Uncertainty and a lack of predictability in legal, fiscal, and regulatory systems pose a continuing impediment to foreign investment in Romania. According to the International Monetary Fund, there were 41 changes to the tax code in 2016 and 2017 and 236 changes in 2018. In December 2018, the government used an emergency ordinance to quickly implement drastic tax, regulatory, and price capping measures on the energy, telecommunications, and financial sectors. Changing political priorities and a lack of capacity have led to persistent underinvestment in infrastructure, which is well below EU standards. Many

companies report experiencing long delays in receiving VAT refunds to which they are legally entitled and allege that deadlines stipulated by law for the processing and payment of refunds often are not respected.

Slovenia: Weak corporate governance and a lack of transparency, particularly with respect to state-owned enterprises, continue to present significant challenges for investors in Slovenia. Potential U.S. investors have reported that opaque decision-making processes in the government's privatization program have discouraged investment.

Slovenia maintains certain limits on foreign ownership or control. Aircraft registration is only possible for aircraft owned by Slovenian or EU nationals or companies controlled by such entities. The law forbids majority ownership by non-EU residents of a Slovenian-flagged maritime vessel unless the operator is a Slovenian or other EU national.

GHANA

TRADE SUMMARY

The U.S. trade balance with Ghana shifted from a goods trade surplus of \$187 million in 2018 to a goods trade deficit of \$105 million in 2019. U.S. goods exports to Ghana were \$837 million, up 8.9 percent (\$69 million) from the previous year. Corresponding U.S. imports from Ghana were \$943 million, up 62.1 percent. Ghana was the United States' 83rd largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Ghana (stock) was \$1.7 billion in 2018, a 2.2 percent decrease from 2017.

TRADE AGREEMENTS

Ghana is a member of the Economic Community of West African States (ECOWAS). Ghana has ratified both the European Union-West Africa Economic Partnership Agreement (EPA) and a bilateral interim EPA with the EU. The bilateral EPA has entered into force, and the EU is looking to Ghana to begin liberalizing its market for EU products in the first quarter of 2020. (The EU-West Africa EPA, which would include Ghana as an ECOWAS member, has not yet entered into force because Nigeria has not yet ratified it.) Ghana ratified the African Continental Free Trade Area (AfCFTA), which entered into force on May 30, 2019, and will become operational on July 1, 2020. In July 2019, the African Union heads of state selected Ghana to host the AfCFTA Secretariat.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ghana's average Most Favored Nation (MFN) applied tariff rate was 11.9 percent in 2018 (latest data available). Ghana's average MFN applied tariff rate was 15.9 percent for agricultural products and 11.3 percent for non-agricultural products in 2018. Ghana has bound 15.4 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 92.5 percent. Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent, more than six times the average level of its MFN applied rates on agricultural goods. Nearly 99 percent of Ghana's tariffs on industrial goods are unbound at the WTO. Ghana can raise tariffs on those products to any rate at any time, which creates uncertainty for importers and exporters.

Ghana participates in the ECOWAS free trade area and its common external tariff (CET), which was slated to be fully harmonized by 2020. In practice some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline. The CET has five tariff bands: zero percent duty on essential social goods (*e.g.*, medicine); five percent duty on essential commodities, raw materials, and capital goods; 10 percent duty on intermediate goods; 20 percent duty on consumer goods; and 35 percent duty on certain goods for which the Ghanaian government elected to afford greater protection, such as poultry and rice.

Taxes

Imports are subject to a variety of fees and charges in addition to tariffs. Ghana applies a number of customs fees, described in the Customs Barriers and Trade Facilitation section below. In addition, like all ECOWAS

countries, Ghana imposes a 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions.

Under the Ghana Export-Import Bank Act, which came into effect on January 3, 2017, Ghana imposes a 0.75 percent levy on all non-petroleum products imported in commercial quantities. This levy replaced the Export Development and Agricultural Investment Fund levy of 0.5 percent. Effective through the end of 2024, Ghana imposed a special import levy of two percent on all imports, except for machinery and equipment listed under chapters 84 and 85 of the Harmonized Tariff System and some petroleum products and fertilizers. Finally, Ghana imposes a 0.2 percent levy on imports from outside African Union (AU) member states to fund its contribution to the AU.

Nontariff Barriers

Import Restrictions

Since 2014, Ghana has limited the number of import permits issued for corn, poultry, and poultry products, although the government no longer enforces a domestic purchase requirement as a condition for import. In 2018, the State Minister of Agriculture halted the issuance and renewal of poultry import permits for local traders in an effort to improve competitiveness and productivity in the domestic sector. The Ghanaian government claims that traders import three to four times Ghana's annual consumption demand but has not provided supporting data. In 2019, the Ministry of Agriculture resumed issuance and renewal of poultry import permits on an *ad hoc* basis, but the issuance and renewal application and approval processes lack transparency, leading to uncertainty for traders.

Ghana has banned the importation of tilapia since 2014 in order to protect local fishermen. Ghana requires registration certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since May 1, 2019, Ghana has placed a temporary ban on the importation of excavators to regulate its use in illegal mining, which has adversely affected the business of a U.S. excavator supplier to Ghana.

Customs Barriers and Trade Facilitation

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk-management approaches, such as the Pre-Arrival Assessment Reporting System. However, the majority of imports are still subject to inspection on arrival. Anecdotal reports suggest between 60 percent and 80 percent of imports are still subject to physical inspection or scanning, well beyond Ghana's announced goal of reducing inspections to roughly 10 percent of imports, causing delays and increased costs. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to product deterioration and result in significant losses for importers of perishable goods.

The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies, which many believed were the source of the long clearance delays. Ghana has launched several initiatives over the past couple of years to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times. There is a fee of 0.4 percent Free on Board (FOB) for the use of the Ghana Community Network, an automated clearing system to facilitate trade. Ghana also charges a one percent fee on the cost, insurance, and freight (CIF) value of goods imported for commercial purposes for the production of a Customs Classification and Valuation Report. In addition, Ghana applies a one percent processing fee on all duty-free imports. These fees may not be calibrated to the cost of services rendered.

Imported vehicles are subject to an examination fee of one percent. Imported used vehicles that are more than 10 years old incur an additional charge ranging from 2.5 percent to 50 percent of the CIF value. The GRA Customs Division uses a price list to determine the value of imported used vehicles for purposes of determining the examination fee. Ghana also reportedly uses the price list in determining the customs value of imported vehicles for purposes of determining tariffs. In April 2019, the Ghanaian government announced a reduction in the reference values used for valuation by 30 percent on the “home delivery values” for used vehicles and 50 percent on “benchmark values” across the board for all other imports.

In July 2018, the GRA launched the Cargo Tracking Notes (CTN) system, an online platform meant to confirm import authenticity, which requires imports to have a CTN number to clear customs. Initially, CTN required U.S. exporters to provide Electronic Export Information (EEI) to obtain a CTN number. However, in light of U.S. legal restrictions on sharing EEI with foreign governments or foreign entities, GRA agreed to accept an alternative document from U.S. exporters, the Export Facilitation Data Form developed by the U.S. Department of Commerce (which does not contain protected information).

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 over 2,700 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. The Ghanaian Food and Drugs Authority (FDA) is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Ghana classifies some imports as “high risk goods” (HRG) that must be inspected to ensure they meet Ghanaian and/or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis (COA) or a certificate of conformance (COC) at the ports in Ghana to Bureau Veritas and Intertek to verify the conformity of HRGs in the country of export. Under a new process called the EasyPASS Program, either Bureau Veritas or Intertek, after satisfactory verification, issues an EasyPASS Certificate (certificate of conformity) which is used to facilitate customs clearance in Ghana. While exporters pay fees ranging from 0.35 percent to 0.50 percent of FOB to Bureau Veritas or Intertek, importers in Ghana are required to register with the GSA and pay an annual registration fee, ranging from \$20 to \$4,000, depending on the type of products they import. Upon arrival of goods at a port in Ghana, the GSA checks the validity of the EasyPASS certificate before releasing a consignment for clearance.

The GSA classifies these HRGs into 11 broad groups (reduced from 20 in 2019, after ceding the inspection of food, cosmetics, pharmaceutical and household chemical products to the Ghanaian FDA) such as toys, sports equipment, electrical appliances, and chemical products. U.S. stakeholders have found this classification system vague and confusing. According to GSA officials, they classify these imports as high risk because they pose “potential hazards,” although that phrase remains undefined in law or regulation.

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.

In August 2019, Ghana unveiled an Automotive Development Policy aimed at creating a domestic automotive industry as part of Ghana’s industrialization plans. It is targeted at attracting automotive assembly manufacturers to invest in Ghana through the provision of tax incentives and other facilitation measures such as import incentives. The automotive policy could have a significant impact on U.S. exports.

In 2018, the United States exported nearly \$200 million in new and used automobiles and vehicle parts to Ghana, representing 23 percent of U.S. total exports to Ghana. The Minister of Trade and Industry announced in August 2019 that the government intended to ban the importation of vehicles older than 10 years. Although an outright ban was not mentioned in the auto policy released by the government, its auto policy prescribed new compulsory vehicle standards, homologation standards, and emissions standards, which could have the practical effect of such a ban. Ghana also notified the WTO of its intention to implement a standards system for both imported and locally produced vehicles.

The American Automotive Policy Council sent a letter to the Ministry of Trade and Industry and GSA encouraging the Ghanaian government to accept U.S. Federal Motor Vehicle Safety Standards (FMVSS) and U.S. EPA emissions standards/regulations as well as adopt the U.S. certification system, rather than relying only on the EU standards, regulations, and certification system. In October 2019, the U.S. Embassy met with the Ministry of Trade and Industry and GSA officials to review U.S. industry's comments and, upon request from the GSA, subsequently shared the comprehensive U.S. FMVSS/EPA standards/regulations with the Ministry of Trade and Industry and GSA for consideration and potential inclusion in Ghana's standards/ regulations.

Sanitary and Phytosanitary Barriers

To address human health risks, Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 15 percent for poultry, and 30 percent for mutton. Imported turkeys must have their oil glands removed. Ghana also restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers.

GOVERNMENT PROCUREMENT

Some large public procurements are conducted with open tendering and allow the participation of foreign firms. However, despite recent pronouncements by the Ghanaian government about reductions in single source procurements, single source procurements remain common. Guidelines that apply to current tenders open to international competitive bidding give a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services. 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 processes across ministries are widespread.

Ghana is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

In 2016, Ghana launched its national intellectual property (IP) policy and strategy in an effort to create a welcoming environment for innovation and investment. Government officials also periodically conduct raids on physical markets for counterfeit and pirated works and inspect import shipments. However, concerns remain that IP enforcement activity remains weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts.

SERVICES BARRIERS

Financial Services

The National Insurance Commission (NIC) imposes nationality requirements with respect to the board and senior management of locally incorporated insurance and reinsurance companies. At least two board members must be Ghanaians and either the Chairman of the board of directors or the Chief Executive Officer (CEO) must be Ghanaian. If the CEO is not Ghanaian, the NIC requires that the Chief Financial Officer be Ghanaian. The NIC must approve any non-locally incorporated insurance companies to provide services, and it permits cross-border reinsurance only after local options are exhausted.

On February 7, 2018, the Bank of Ghana (BoG) issued a directive requiring all financial institutions to route domestic payment transactions, including those of international schemes, through the national switch, Ghana Interbank Payment and Settlement Systems Limited (GhIPSS), by July 2, 2018. The BoG directive would give an unfair competitive advantage to GhIPSS, a wholly owned subsidiary of the BoG, which operates its own domestic proprietary card scheme “e-zwich.” The BoG suspended the directive after U.S. Government officials raised the matter with Ghanaian government officials. On June 19, 2019, however, President Akufo-Addo signed the Payment Systems and Services Act into law. The Act includes several concerning requirements for payment service companies, including that each company: a) must have “at least 30 percent equity participation of a Ghanaian company or person,” b) must maintain a minimum capital within Ghana (undefined); c) must process all retail debit and credit electronic payment transactions within Ghana; and d) must maintain a board of directors (five-person minimum) with at least three members residing in Ghana—members must also be “sound and proper” as assessed by the Bank of Ghana. The provisions raise concerns regarding unnecessary data localization requirements that may inhibit business operations, and increase the risk of regulatory conflicts of interest, given the Bank of Ghana’s ownership of GhIPSS and oversight role. Enforcement of the new implementing regulations may commence by April 2020.

Telecommunications Services

Pursuant to legislation enacted in 2009, Ghana requires a minimum rate of \$0.19 per minute for terminating international calls into Ghana, which is significantly higher than the average rate prior to 2009. This rate increase correlated with a decrease in call volume from the United States to Ghana and a decrease in U.S. termination payments to carriers in Ghana.

INVESTMENT BARRIERS

All foreign investment projects must be registered with the Ghana Investment Promotion Center. Registration is designed to be completed within five business days, but 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 automobile 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 apply for a mineral right with regard to industrial minerals only for projects involving an investment of at least \$10 million.

The 2006 Minerals and Mining Act mandates compulsory local participation, whereby the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary that is incorporated under the Ghana Companies Act, signed in 2019, or Private Partnership Act.

Oil and Gas

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation (GNPC) holds a minimum 15 percent participating carried interest and a local Ghanaian firm or individual holds a minimum five percent interest. The Petroleum Commission issues all licenses, but Parliament must approve all exploration licenses. Further, local content regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations—standards that many international companies describe as unattainable or burdensome. 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, and notably has the authority to alter the requirements set by law for any specific contract. The criteria for the Minister's approval of local equity partners in commercial transactions remain unclear, and the situation creates a perception of corruption or favoritism in the selection of local equity partners in government approved concessions or contracts. The U.S. Embassy has repeatedly raised concerns with Ghanaian government officials regarding the potential for malfeasance in the application of local equity requirements and has shared its concerns with the private sector and other diplomatic missions in Ghana. Non-compliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company's annual revenues, range from \$70,000 to \$150,000, compared to fees of between \$5,000 and \$30,000 for local companies.

Local Content and Location Participation Requirements

In December 2017, Ghana introduced regulations requiring local content and local participation in the power sector. The Energy Commission (Local Content and Local Participation) (Electricity Supply Industry) Regulations, 2017 (L.I. 2354) specify minimum initial levels of local participation/ownership and 10 year targets:

Electricity Supply Activity	Initial Level of Local Participation	Target Level in 10 Years
Wholesale Power Supply	15	51
Renewable Energy Sector	15	51
Electricity Distribution	30	51
Electricity Transmission	15	49
Electricity Sales Service	80	100
Electricity Brokerage Service	80	100

The regulations also specify minimum and target levels of local content in engineering and procurement, construction works, post construction works, services, management, operations and staff. All persons engaged in or planning to engage in the supply of electricity are required to register with the Electricity Supply Local Content and Local Participation Committee and satisfy the minimum local content and participation requirements within five years. Failure to comply with the requirements could result in a fine or imprisonment.

Effective January 1, 2019, security services have a 100 percent local content mandate. Under the Classification of New Services Under the Minerals and Mining (Support Services) Regulations, 2012 (LI 2174), Ghana restricts Class B mining support services, which include catering, camp management, and security services, to Ghanaians only. All mine support services, providers, license holders, dealers are expected to comply with this mandate. Non-Ghanaians are not permitted to enter into new contracts for the provision of such services with other mineral rights holders.

OTHER BARRIERS

Foreign investors experience difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining required work permits can be unpredictable and take several months from application to delivery. Obtaining access to land may also be challenging for foreign investors. Foreigners are allowed to enter into long-term leases of up to 50 years and the lease may be bought, sold, or renewed for consecutive terms. Non-Ghanaians are permitted to acquire interests in land only on a long-term leasehold basis, and Ghana's complex land tenure system makes establishing clear title on real estate difficult.

Foreign investors in Ghana also must contend with a politicized business community and a lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption among government and business figures also remains a major concern. Ghanaian law enforcement and judicial bodies have robust legal powers to fight corruption in the country, but the government does not implement or enforce anticorruption laws effectively.

Contract Sanctity

In October 2019 the Ghanaian government decided to terminate a private contract over unproven allegations of wrongdoing involving a private concession agreement that formed an integral component of the U.S. Millennium Challenge Corporation's (MCC) five-year \$498 million Ghana Power Compact. The full Compact aimed to reduce technical and commercial losses of Ghana's state-owned electricity distribution company through a mix of modern infrastructure investment and the introduction of private sector participation in Ghana's Southern Distribution network via a twenty-year concession. An MCC-financed independent forensic audit found no evidence of fraud on the part of the private concessionaire. Rather than working with the private concessionaire to remedy any possible anomalies under the terms of the

Parliament-approved transaction agreements, the Ghanaian government abrogated the contract without due process. Ghana's unwarranted cancellation of the agreement resulted in the de-obligation of \$190 million of MCC Compact Tranche II funding, which was conditioned on a successful private concession.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$2.8 billion in 2019, a 16.0 percent increase (\$393 million) over 2018. U.S. goods exports to Guatemala were \$6.8 billion, up 2.6 percent (\$174 million) from the previous year. Corresponding U.S. imports from Guatemala were \$4.0 billion, down 5.2 percent. Guatemala was the United States' 36th largest goods export market in 2019.

U.S. exports of services to Guatemala were an estimated \$1.7 billion in 2018 (latest data available) and U.S. imports were \$1.3 billion. Sales of services in Guatemala by majority U.S.-owned affiliates were \$733 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Guatemala (stock) was \$1.0 billion in 2018, a 2.1 percent decrease from 2017.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA-DR, as of January 1, 2015, all originating U.S. consumer and industrial goods enter Guatemala duty free. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Guatemala duty free and quota free.

In addition, nearly all U.S. agricultural exports enter Guatemala duty free under the CAFTA-DR. Guatemala will eliminate its remaining tariffs on rice by 2023 and on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen and chilled chicken leg quarters, five years early. For certain products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. The Guatemalan government is required under the CAFTA-DR to make TRQs available on January 1 of each year.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Guatemala, committed to improve transparency and efficiency in administering their customs procedures. All CAFTA-DR countries, including Guatemala, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, sharing proposed measures with the public and the other CAFTA-DR countries for comment, and sharing information with the other CAFTA-DR countries to combat the illegal transshipment of goods in circumvention of a Party's country's customs laws.

Guatemala notified its customs valuation legislation to the World Trade Organization (WTO) in 2005, but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

U.S. companies have raised concerns that Guatemala's Tax and Customs Authority (SAT) is using reference prices to determine the value of imported goods. Further, when SAT performs an investigation based on valuation, it can detain the imported product for up to 25 days. U.S. industry reports that many investigations are ongoing and to date, none has been resolved in favor of the importer.

U.S. companies have also reported that Guatemalan customs authorities have challenged the validity of claims of origin based on, *inter alia*, differing interpretations of product tariff classification. Upon tariff reclassification, SAT rejects the claim of origin and assesses the higher non-preferential rate. In cases of rejected claims, SAT previously failed to identify in writing the basis of its decisions and only allowed importers to make one correction to the certification of origin per entry. SAT's consistent rejections of certificates and benefits for importers of U.S. products negatively affected imports of U.S. goods in previous years. In April 2019, SAT issued a memorandum instructing technical customs officials on how to correctly apply the certification of origin rules under CAFTA-DR, which appears to have addressed concerns raised by importers. According to SAT's instructions, if a certificate of origin is rejected, SAT must issue a resolution explaining the reasons for the rejection. The instructions also clarify that importers can resubmit corrected certificates of origin as many times as necessary.

Guatemala ratified the WTO Agreement on Trade Facilitation (TFA) on March 8, 2017. Guatemala is overdue to submit to the WTO three transparency notifications related to the details of operation of the single window (Article 10.4.3); the use of customs brokers (Article 10.6.2); and customs contact points for the exchange of information (Article 12.2.2). These notifications were due to the WTO on February 22, 2017 according to Guatemala's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Guatemala requires product registration for food products, as well as for animal feed and pet food. Companies are required to submit necessary documents to the Ministry of Public Health and Social Assistance and receive approval before products are sold into the market. Industry has raised concerns that the process is burdensome and can delay the introduction of products into the market by several months.

Sanitary and Phytosanitary Barriers

Although Guatemala published an official list of quarantine pests in November 2016, it has yet to establish a science-based protocol for treating the pests. For example, Guatemala still has a policy to fumigate and

then deny entry of containers with quarantine pests, regardless of whether another treatment is possible for select products. This has resulted in unnecessary, inappropriate, and expensive mitigation measures affecting U.S. products.

SUBSIDIES

Export Subsidies

Until December 31, 2015, Guatemala employed an export incentive program in the Law for the Promotion and Development of Export Activities and Drawback. 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.

In February 2016, the Guatemalan Congress amended the Law for the Promotion and Development of Export Activities and Drawback to replace this tax incentive program. The tax exemptions under the 2016 amendments have a narrower scope, applying only to apparel and textile companies as well as to information and communication technology service providers, such as call centers and business processes outsourcing operations.

GOVERNMENT PROCUREMENT

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

Government institutions are required to use the online government procurement system, GUATECOMPRAS, to track government of Guatemala procurement processes since March 2004. GUATECOMPRAS has improved the efficiency and transparency of government tendering processes. However, foreign suppliers must still submit their bids through locally registered representatives, a process that places foreign bidders at a competitive disadvantage.

Guatemala is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Guatemala remained on the Watch List in the 2019 Special 301 Report. The number of intellectual property (IP) enforcement raids and convictions has declined significantly in recent years. IP enforcement activities remain limited and appear inadequate in relation to the scope of the problem due to resource constraints, a lack of political will, and poor coordination among law enforcement agencies. Other concerns include the widespread availability of counterfeit and pirated goods, including counterfeit pharmaceuticals, government use of unlicensed software, and trademark squatting. While there have been some recent efforts to address cable piracy, stakeholders continue to report that problems remain. The United States continues to urge Guatemala to strengthen enforcement, including with respect to criminal prosecutions, as well as

administrative and border actions. Additionally, the United States continues to urge Guatemala to provide greater clarity regarding the scope of protection for geographical indications (GIs), particularly 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 IP obligations under the CAFTA-DR.

SERVICES BARRIERS

Professional Services

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

INVESTMENT BARRIERS

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations and inconsistent judicial decisions effectively operate as barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming, and civil cases can take many years to resolve. U.S. firms and citizens have found corruption in the government, including in the judiciary, to constrain investment. The CAFTA-DR contains strong public sector anti-bribery commitments and anti-corruption measures in government contracting and U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries inhibit current and potential investment by U.S. firms.

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was \$649 million in 2019, a 27.0 percent decrease (\$240 million) over 2018. U.S. goods exports to Honduras were \$5.5 billion, down 2.0 percent (\$110 million) from the previous year. Corresponding U.S. imports from Honduras were \$4.8 billion, up 2.8 percent. Honduras was the United States' 44th largest goods export market in 2019.

U.S. exports of services to Honduras were an estimated \$1.3 billion in 2018 (latest data available) and U.S. imports were \$731 million. Sales of services in Honduras by majority U.S.-owned affiliates were \$607 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Honduras (stock) was \$504 million in 2018, a 64.1 percent decrease from 2017. There is no information on the distribution of U.S. FDI in Honduras.

TRADE AGREEMENTS

Dominican Republic-Central America-United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Honduras applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA-DR, 100 percent of U.S. consumer and industrial goods enter Honduras duty free. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Honduras duty free and quota free, creating opportunities for U.S. fiber, yarn, fabric, and apparel manufacturers.

In addition, most U.S. agricultural exports enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all U.S. agricultural products by 2025. Honduras eliminated tariffs on yellow corn and pork as of January 1, 2020; on rice and chicken leg quarters by 2023; and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. The Honduran government is required under the CAFTA-DR to make TRQs available on January 1 of each year. Honduras monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure Honduran issuance of these permits occurs in a timely manner.

Nontariff Barriers

Local Content Requirements

In June 2018 and June 2019, pork importers were required to purchase a quantity of Honduran live hogs from local producers at a price established by the Hog Producers Association. The established price per pound for live hogs is higher than the price of imported pork meat. Importers forced to purchase Honduran live hogs also face costs for slaughtering and processing – costs they do not face in connection with imported pork meat. The quantity of live hogs that each importer must purchase is based on the volume of pork that the importer brings into Honduras. Importers are concerned that the Honduran government may pressure them to increase local purchases going forward.

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Honduras, committed to improve transparency and efficiency in administering customs procedures. All CAFTA-DR countries, including Honduras, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, sharing proposed measures with the public and the other CAFTA-DR countries for comment, and sharing information with the other CAFTA-DR countries to combat the illegal transshipment of goods in circumvention of a Party's customs laws.

In February 2016, the government of Honduras formally separated customs functions from the tax collection authority *Direccion Ejecutiva de Ingresos*. The new customs institution, the Directorate of Customs Revenue, (*Direccion Adjunta de Rentas Aduaneras* or DARA), operates under a mandate to guarantee trade facilitation and customs duties collection using efficient controls and best practices to promote increased economic activity and development in Honduras. DARA is also tasked with verifying claims of origin to demonstrate eligibility for CAFTA-DR as well as other international agreements.

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

On September 27, 2019, an executive decree was published in the Official Gazette dissolving DARA as of December 31, 2019, and paving the way for the new customs entity, Customs Administration of Honduras, (*Administración Aduanera de Honduras* or AAH). The same executive decree dissolves COPRISAO as a temporary supervisory body for DARA as of the same date. AAH began formal operations on January 1, 2020.

In July 2016, Honduras ratified the WTO Trade Facilitation Agreement (TFA). However, inefficient agency coordination and publication of information piecemeal across ministerial websites collectively reduce the efficacy and transparency of the regulatory process in Honduras.

The Secretariat for Economic Development has taken a lead role within the Government of Honduras to ensure TFA compliance. However, Honduras is overdue in submitting two transparency notifications related to import, export, and transit regulations (Article 1.4); and the use of customs brokers (Article 10.6.2). These notifications were due to the WTO on February 22, 2017 according to Honduras's self-designated TFA implementation schedule and Honduras is well advanced in the establishment of its

National Trade Facilitation Committee (NTFC) (Article 23.2). The NTFC has a critical role in trade facilitation and business competitiveness as its mandate is broad, including objectives to identify and address regulatory and procedural bottlenecks in the trade process, encourage inter-agency coordination, and provide directives on major trade facilitation issues, and a work plan for 2020 with indicators and milestones for its first year of operation.

In July 2018, U.S. Agency for International Development launched its Trade Facilitation and Integrated Border Management Activity. The five-year, \$17 million award aims to enhance regional economic integration and trade facilitation, focusing on improving facilitation in the Northern Triangle countries.

Guatemala and Honduras formed a Customs Union on June 26, 2017, to foster and increase efficient cross-border trade. The two countries opened a bi-national facility located at the Corinto port-of-entry (POE) in Cortes, Honduras, as the first joint POE in the Americas to incorporate the transmission of advanced information to facilitate cargo processing. On July 20, 2018, El Salvador approved joining the Customs Union with Guatemala and Honduras.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Product Registration

Product registration is a legal requirement for marketing products in Honduras that has been cumbersome and time consuming for U.S. exporters. Registration of products with the Ministry of Health has been particularly burdensome for importers. The U.S. Government has played a key role in providing technical assistance to the government of Honduras to support efforts to create a more streamlined product registration system. In 2017, Honduras shifted management of product registration from the Ministry of Health to the Sanitary Regulatory Agency (Agencia de Regulacion Sanitaria or ARSA), which significantly improved the efficiency of the registration process. In 2017, ARSA granted 9,000 of 13,000 pending sanitary registrations, and by the end of 2018 the backlog was eliminated. However, the registration process remains cumbersome for importers.

Discriminatory Tax

Honduran Customs imposes a sales tax on pork rib imports when the product description is in English. However, if the product description is in Spanish, the product is exempt from the sales tax.

SUBSIDIES

Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain pre-existing duty waiver measures for such time as it remains an Annex VII “developing country” for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. Honduras provides tax exemptions to firms in free trade zones. Honduras currently employs the following export incentive programs: Free Trade Zone of Puerto Cortes, Export Processing Zones, and Temporary Import Regime.

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, Honduras launched the National Procurement Office's (ONCAE) new procurement certification program to improve the accountability and competency of its staff. However, as of early 2020, only three of ten new staff positions had been filled with full-time permanent civil service employees. As part of ONCAE's State Contracting and Procurement Efficiency Program to simplify the bidding process, Honduras also implemented a national Standard Bidding Document, which has been accepted by multilateral financing entities such as the Inter-American Development Bank and the World Bank.

Honduras is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The United States worked closely with the government of Honduras as it developed a work plan, in early 2016, to improve the protection and enforcement of intellectual property (IP) in Honduras. However, significant challenges remain, including with respect to online and software piracy, cable signal piracy, and the unauthorized distribution and sale of counterfeit and pirated goods. The United States will continue to monitor Honduras's implementation of its IP obligations under the CAFTA-DR.

SERVICES BARRIERS

U.S. firms and citizens report a significant concern with obtaining government permits, particularly in real estate transactions, and meeting regulatory requirements in the telecommunications, health, and energy sectors.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, the law allows foreigners to purchase properties, with some acreage restrictions, in designated zones established by the Ministry of Tourism in order to construct permanent or vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras. During 2018, community opposition stalled construction of several large-scale infrastructure projects, representing an estimated \$1 billion in pending investment. Several violent protests occurred on the private property of projects involving U.S. investors, particularly in the extractive and energy sectors.

Although Honduras is open to foreign investment with limited restrictions and performance requirements, companies have experienced long waiting periods for regulatory and legislative approvals. Although starting a business is easy, efforts are underway to streamline administrative procedures through the government's Transformation Unit.

OTHER BARRIERS

Bribery and Corruption

The CAFTA-DR contains strong public sector anti-bribery commitments and anti-corruption measures in government contracting. U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities. In addition, Honduras has undertaken several efforts to address corruption, including pursuing indictments against current and former government officials; partnering with the Organization of American States, to create the independent Mission to Support the Fight against Corruption and Impunity in Honduras; 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.

However, despite these efforts and bilateral commitments, U.S. firms and citizens continue to report corruption in the government, including in the judiciary, to be a significant concern and a constraint to successful investment in Honduras. These reports suggest that corruption is pervasive in government procurement, the issuance of government permits, and the regulatory system in general. The telecommunications, health, and energy sectors appear to be particularly problematic, as do real estate transactions, especially land title transfers. In 2018, several U.S. real estate investors involved in property disputes stemming from falsified land titles faced violence and threats.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was \$26.1 billion in 2019, a 15.9 percent decrease (\$4.9 billion) over 2018. U.S. goods exports to Hong Kong were \$30.8 billion, down 17.4 percent (\$6.5 billion) from the previous year. Corresponding U.S. imports from Hong Kong were \$4.7 billion, down 25.0 percent. Hong Kong was the United States' 15th largest goods export market in 2019.

U.S. exports of services to Hong Kong were an estimated \$13.9 billion in 2019 and U.S. imports were \$11.0 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were \$28.0 billion in 2017 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were \$6.3 billion.

U.S. foreign direct investment (FDI) in Hong Kong (stock) was \$82.5 billion in 2018, a 1.6 percent increase from 2017. U.S. direct investment in Hong Kong is led by nonbank holding companies, wholesale trade, and manufacturing.

OVERVIEW

Hong Kong is a special administrative region (SAR) of the People's Republic of China. The Hong Kong Basic Law provides for a high degree of autonomy, although Hong Kong's foreign relations and defense are the responsibility of China. Hong Kong is a separate customs territory, is able to enter into international agreements on its own behalf in commercial, economic, and certain legal matters, has its own trade laws and regulations, and is a separate member of both the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

IMPORT POLICIES

The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port, with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment.

INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides robust intellectual property (IP) protection and enforcement and for the most part has strong laws in place. Hong Kong also has 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 IP-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. While the Hong Kong Customs and Excise Department investigates IP crimes and routinely seizes IP-infringing products arriving from mainland China and elsewhere, U.S. stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong in significant quantities. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was \$23.3 billion in 2019, an 11.6 percent increase (\$2.4 billion) over 2018. U.S. goods exports to India were \$34.4 billion, up 2.7 percent (\$907 million) from the previous year. Corresponding U.S. imports from India were \$57.7 billion, up 6.1 percent. India was the United States' 12th largest goods export market in 2019.

U.S. exports of services to India were an estimated \$26.4 billion in 2019 and U.S. imports were \$30.3 billion. Sales of services in India by majority U.S.-owned affiliates were \$32.1 billion in 2017 (latest data available), while sales of services in the United States by majority India-owned firms were \$17.8 billion.

U.S. foreign direct investment (FDI) in India (stock) was \$46.0 billion in 2018, a 3.4 percent increase from 2017. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and finance and insurance.

TRADE AGREEMENTS

India has a range of bilateral and regional trade agreements in force, including several free trade agreements (FTA) and preferential trade agreements (PTA). These agreements include the Asia Pacific Free Trade Agreement; a series of India–Africa Agreements with 19 African nations, the Agreement on Trade in Goods between Indian and the Association of South East Asian Nations (ASEAN, which consists of Brunei Darussalam, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam), and the South Asian Free Trade Area (SAFTA), which includes Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, and Sri Lanka. India also has trade arrangements with the European Free Trade Association (Iceland, Liechtenstein, Norway, and Switzerland) and a PTA with MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay).

India also has bilateral Comprehensive Economic Cooperation Agreements or Comprehensive Economic Partnership Agreements with Chile, Indonesia, Japan, Malaysia, Singapore, South Korea, and Thailand. The India-Sri Lanka FTA provides almost 100 percent duty-free access and the parties are currently negotiating an Economic and Technology Cooperation Agreement. India and Nepal have initiated discussions to update the India–Nepal Treaty on Trade.

India is engaged in negotiations or formal discussions on the India–Canada Comprehensive Economic Cooperation Agreement; the India–European Union Broad Based Trade and Investment Agreement; the India–Israel FTA; the India–Gulf Cooperation Council FTA, the India–Peru FTA, and the India–Ecuador FTA. India is also exploring PTAs with Colombia and Iran.

On November 5, 2019, Prime Minister Modi announced India would pull out of negotiations on the proposed Regional Comprehensive Economic Partnership (RCEP) FTA that includes the ten ASEAN member countries, Australia, China, Japan, Korea, and New Zealand.

IMPORT POLICIES

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

reform efforts, it also promotes programs such as “Make in India” that favor domestic production over imports.

Tariffs and Taxes

Tariffs

India’s simple average Most Favored Nation (MFN) applied tariff rate was 17.1 percent in 2018 (latest data available). India’s average MFN applied tariff rate was 38.8 percent for agricultural products and 13.6 percent for non-agricultural products in 2018 (latest data available). India has bound 74.3 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 50.8 percent.

In addition to tariffs, in 2018 India implemented a 10 percent social welfare surcharge on imports, except certain products exempted pursuant to an official customs notification. India assesses the surcharge on the value of other duties (not on the customs value of the imported product), which reduces the levied value. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

India’s average MFN applied tariff rate of 17.1 percent remains the highest of any major world economy. Since 2014, the Indian government led by Prime Minister Narendra Modi has promoted the “Make in India” campaign, a drive to build the country’s manufacturing capacity in part by cutting barriers to foreign investment and introducing regulatory reforms. As part of the campaign, the government has raised duties on two broad groups of products to encourage domestic production: (1) an assortment of labor-intensive products; and (2) electronics and communication devices, including mobile phones, televisions, and associated parts and components.

India’s tariff regime is also characterized by large disparities between WTO bound rates and MFN applied rates. India’s WTO bound tariff rate averaged 50.8 percent, while its applied MFN tariff for 2018 (latest data available) averaged 17.1 percent. India’s bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300 percent. Applied agricultural tariff rates are also high, averaging 38.8 percent. While India’s applied tariff rates for certain agricultural products are lower, the rates still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, and frozen French fries and other prepared foods used in quick-service restaurants). In addition, while India has bound all agricultural tariff lines in the WTO, nearly 30 percent of India’s non-agricultural tariffs remain unbound.

Given this large disparity between WTO bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. The government of India took advantage of this tariff flexibility in the 2019/2020 budget, when it increased tariffs on 68 separate line items, including key U.S. exports in the information and communications technology, paper products, chemicals, and automobile parts sectors, with no warning or public consultation process. This followed tariff increases in the 2018/2019 budget on 52 product groups, which impacted U.S. exports in the agricultural, information and communication technology, and automotive sectors. Prior to tariff increases beginning in 2014, certain information and communication technologies were imported duty free, including telecommunications equipment such as smartphones and related parts as well as network switches.

In June 2019, following the U.S. withdrawal of India’s preferential tariff benefits under the Generalized System of Preferences (GSP), India implemented retaliatory tariffs, ranging from 1.7 percent to 20 percent on a range of products imported from the United States, including almonds, apples, walnuts, chickpeas,

lentils, phosphoric acid, boric acid, diagnostic reagents, binders for foundry molds, select steel and aluminum items, and threaded nuts. While the decision to implement these tariffs followed the U.S. action related to GSP, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the President's decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has urged India to work to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on July 3, 2019, the United States launched a dispute settlement proceeding against India in the WTO, challenging India's retaliatory tariffs.

India maintains very high applied tariffs on a wide range of goods, including vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and alcoholic beverages (150 percent). India also operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's [list of essential medicines](#).

Taxes

Prior to the introduction of the Goods and Services Tax (GST) system in July 2017, India maintained a complex and opaque system of taxes, excise duties, and other charges. Imports were subject to state-level value-added or sales taxes, the Central Sales Tax, and various local taxes and charges. The GST simplified the tax regime by unifying India into a single market and improving the ease of doing business. The GST is made up of three main taxes: the Central GST is a fee collected by the central government for sales in all states; the State GST is a fee collected by each state for sales within a state; and the Integrated GST (IGST) is a fee collected by the central government for sales between states and on imported goods. IGST on imports is assessed on the sum of the customs value of the goods and the customs duties assessed on those goods, thereby amplifying the effect of customs tariff rate increases.

Under the new system, goods and services are taxed under four basic rates: 5 percent, 12 percent, 18 percent, and 28 percent. Some items such as bread, fresh fruits and vegetables, and certain dairy products have been exempted from the GST, but are subject to certain preexisting taxes. While implementation challenges remain, India's GST council meets regularly to adjust GST rates and provide clarifications and revisions to GST policy.

Nontariff Barriers

India maintains various forms of nontariff regulations on three categories of products: banned or prohibited items, which are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products and certain chemicals); and "canalized" items (*e.g.*, some pharmaceuticals and corn under a tariff-rate quota) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity. India often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees. However, the [official website of the Director General of Foreign Trade](#) maintains a list of restricted items.

Import Restrictions

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions and other requirements that only apply to imports, and long periods of time sometimes pass without the issuance of any import licenses. A certificate from the Central Excise Authority and no objection certificates (NOCs) from the relevant government ministry are required before an application for an import permit can be submitted to the Ministry of Agriculture and Farmers Welfare's (MAFW) Central Insecticides Board and Registration Committee (CIBRC). In order to receive a certificate from the Central Excise Authority, importers of boric acid for non-insecticidal use must identify end-users of the product, which is often not possible in advance of a shipment, precluding them from obtaining an NOC. In addition, importers must provide confirmation of the last three years of the company's purchases of boric acid, separated out by the quantity imported and procured locally in India, as well as data on the total output of the finished product that utilized the boric acid for the previous three to five years. Once a Central Excise Authority certificate is received, the relevant government ministry must provide a NOC for a recommended quantity to the CIBRC. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction to boric acid imports. In addition, in August 2017, the Indian government announced quantitative restrictions on all pesticides and insecticides. While it later rescinded the restrictions because of its inability to deploy the relevant software to support the action, there remains uncertainty regarding the future implementation of these restrictions. The United States has urged India to eliminate its import licensing requirements in meetings of the WTO Committee on Import Licensing and through the Trade Policy Forum (TPF).

In order to manage domestic oversupply of pulses, the Indian government began imposing restrictions on imports of various pulses in 2017. In August 2017, India imposed import quotas on pigeon peas, black matpe beans (Urd or *Vigna radiate*) and mung beans (Moong or *Vigna mungo*), and moong and urad lentils. In April 2018, the Indian government extended these quantitative restrictions to also include peas. On March 29, 2019, India's Ministry of Commerce and Industry (MOCI) notified quantitative restrictions for the Indian fiscal year 2019/2020 on imports of pulses, including mung beans (150,000 metric tons (MT)), peas (150,000 MT), black gram lentils (150,000 MT) and pigeon peas (200,000 MT). On July 5, 2019, MOCI announced an additional 200,000 MT quota for pigeon peas.

Import Licensing

India distinguishes between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned, when assessing whether licenses are required. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Therefore, U.S. stakeholders report that obtaining an import license for remanufactured goods has been onerous. Problems that stakeholders report include excessive details required in the license application, quantity limitations set on specific part numbers, and long delays between application and grant of the license. A Chartered Engineer's Certificate is also required to import both refurbished and used manufactured goods. Used items must be no more than five years old, while refurbished items must be no more than seven years old and have a remaining life span of five years.

Customs Barriers and Trade Facilitation

In addition to being announced with the annual budget, India's tariff rates are modified on an *ad hoc* basis through notifications in the Gazette of India and are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program, rendering India's customs system complex to decipher and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials may reject the declared transaction value of an import if it is deemed to be lower than the ordinary competitive price, potentially raising the cost of exporting to India beyond the cost of 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 subject to excessive searches and seizures of imports.

Through Notification No. 91/2017-Customs (N.T.) dated September 26, 2017, India amended Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to allow for the actual cost of transportation and insurance to be included when determining the customs value of imported products. However, India continues to allow for the use of costs that appear fictitious in cases where the actual cost of transportation or insurance is not ascertainable. For example, if Indian Customs officials determine they cannot ascertain transportation costs, a cost of a 20 percent Free On Board (FOB) value will be used as the cost of transportation in determining the total customs value of the imported product for the purpose of assessing tariffs. The United States continues to raise questions about these practices in the WTO Committee on Customs Valuation.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure, including the provision of multiple exemptions that vary according to product, user, or intended use, also creates uncertainty and contributes to delays in customs approvals. While difficulties persist, in 2018 India debuted its [India Trade Portal](#) in cooperation with the Federation of Indian Exporters. Among other information, the India Trade Portal seeks to provide updated information on the latest tariff and duty rates, searchable by Harmonized System codes. The government of India is also increasing the use of electronic forms. As part of its computerization and electronic services effort, India has implemented a Single Window through the web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as [ICEGATE](#). It provides for electronic filing of certain import documentation, electronic payment, and online verification of import and export licenses. As of July 1, 2019, ICEGATE is the single integrated electronic window for making payments of all Central Excise Duties and Service Taxes as notified by India's Central Board of Indirect Taxes and Customs. Use of ICEGATE has reduced customs processing times.

Medical Device Price Controls

Thirty-three medical devices have been notified as drugs and are regulated under the Drugs and Cosmetics Act. Of these, only four devices—cardiac stents, drug eluting stents, condoms, and intra-uterine devices—are included in the National List of Essential Medicines, which provides India's Department of Pharmaceuticals and National Pharmaceutical Pricing Authority (NPPA) the authority to implement price ceilings.

On February 13, 2017, NPPA issued an order to cap prices of coronary stents. Subsequently, knee implants were brought under price control under Paragraph 19 of the Drugs (Prices Control) Order 2013 in August 2017. In August 2019, India granted a 10 percent price increase for knee implants. The remaining medical devices are under no price regulation. U.S. companies have raised significant concerns with these actions.

Price controls for cardiac stents and knee implants do not differentiate for technological innovation and limit U.S. companies' access to the Indian market.

On October 18, 2019, India's Ministry of Health and Family Welfare released a draft notification proposing mandatory certification of all medical devices by the Central Drugs Standard Control Organization.

Ethanol Import Restrictions

India prohibits the import of ethanol for fuel use. On August 21, 2018, the Directorate General of Foreign Trade (DGFT) of the MOCI amended the import policy through Notification 27/2015-2020 and restricted biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. On May 24, 2019, MOCI Notification 6/2015-2020 prohibited imports of biofuels (HS 2207.20, HS 2710.20, and HS 3826) without an import license. The new regulation requires that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

On June 4, 2018, the government of India released the National Policy on Biofuels 2018, in which it sets a target of 20 percent blending of ethanol with gasoline and a target of 5 percent blending with biodiesel by 2030. In 2019, India's ethanol fuel penetration levels were far below those target levels.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

In addition to discussing technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) matters with Indian officials bilaterally, the United States discusses these trade issues with India during WTO TBT and SPS Committee meetings, as well as on the margins of those meetings.

Technical Barriers to Trade

Cosmetics – Registration Requirements

On November 29, 2018, India's Ministry of Health and Family Welfare invited comments on a new draft of the Cosmetics Rules. U.S. stakeholders provided comments to India encouraging a risk-based regulatory framework for cosmetics without unnecessary pre-approvals that aligns with international standards and industry best practices with a reasonable timeframe for implementation.

On December 12, 2018, India increased registration fees for importers of cosmetics. As a result, the registration fee is now \$2,000 for each cosmetic brand. India also added a new \$50 fee for each product variant. U.S. companies have raised concerns that these fees disadvantage imported products by raising costs.

Separately, India banned imports of animal-tested cosmetics on February 15, 2015, as a result of Rule 135-B of the Drug and Cosmetics (Fifth Amendment) Rules, 2014, announced through the Central Drugs Standard Control Organization (Office of Drugs Controller General India) Circular. India had previously banned domestic cosmetic testing on animals in May 2014 through the Gazette of India, Ministry of Health and Family Welfare, "Notification" dated May 21, 2014. U.S. exporters have reportedly encountered difficulties proving that cosmetics comply with the animal testing ban and have yet to receive guidelines from the Indian government on how to do so.

Labeling Requirements

In July 2019, the Food Safety and Standards Authority of India (FSSAI) notified to the WTO a revised version of its 2018 Labelling and Display Regulation, requiring mandatory front-of-pack nutrition labeling

of added sugar and saturated fat, and requiring coloring nutrient labels red that are “High in Fat, Sugar and Salt” based on thresholds established by the government of India. The 2019 amendment also introduced a warning statement requirement for alcoholic beverages to state that “consumption of alcohol is injurious to health.”

In 2011, FSSAI introduced warning labelling of certain artificial sweeteners in beverages and processed foods sold in India stating, “Not Recommended for Children.” Additionally, in December 2016, FSSAI introduced warning labels for products containing caffeine, such as soda and energy drinks, proclaiming these as “High Caffeine Beverages,” even though many had lower levels of caffeine than ordinary drip coffee.

Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019

In July 2019, FSSAI published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019. The 2019 amendment revised FSSAI’s 2018 mandatory beverage alcohol standards, which entered into force in April 2019. FSSAI has not clarified the timeline for enforcement of its amended regulations. While FSSAI addressed several of the issues that the United States had raised with India in response to its review of previous versions of the regulation, several concerns remain including: 1) the establishment of analytical parameters for a range of naturally occurring components in distilled spirits; 2) minimum and maximum requirements for ethyl alcohol; and 3) lack of explicit protection for Bourbon and Tennessee Whiskey as distinctive products of the United States.

Livestock Genetics

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) of the MAFW imposes restrictions on imports of livestock genetics and establishes quality standards. The entire procedure for obtaining import permission generally takes four months or longer. Importation of animal genetics requires a NOC from the state government, import permission from the DGFT, and an import permit from the DAHDF. However, domestic producers of animal genetics are not required to obtain an NOC.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin. India has explained that its position is based on religious and cultural grounds. This requirement, along with high tariff rates, continues to prevent market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. In order to address India’s religious and cultural concerns, in 2015 and again in 2018, the United States proposed labeling solutions to allow for consumer choice between dairy products derived from animals that have or have not consumed feeds with ruminant protein. India rejected the proposals. The United States continues to press the Indian government to provide access to the Indian dairy market.

Security and Safety Testing Requirements for Equipment

In September 2017, India’s Ministry of Communications, Department of Telecommunications published the Indian Telegraph (Amendment) Rules, 2017, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment procedures, which require local security testing for telecommunication products. It is still unclear whether India has sufficient lab capacity to fully implement the testing criteria. U.S. industry remains concerned with the in-country testing requirements and lack of clarity over the measure’s scope. U.S. officials, bilaterally under the TPF and in the WTO TBT Committee,

continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition Arrangement, to which India is a signatory.

Since 2012, the United States has been actively raising the concerns of the U.S. electronics and information and communications technology manufacturers regarding the Ministry of Electronics and Information Technology's (MEITY) Compulsory Registration Order (CRO). The CRO prescribes safety standards and in-country testing requirements for electronic and information and communications technology goods. The policy, which entered into force in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited by the Bureau of Indian Standards (BIS), even if the products have already been certified by accredited international laboratories. In 2017, the coverage of the CRO increased to 44 product categories. U.S. stakeholders have raised concerns regarding delays in product registration due to the lack of government testing capacity, a cumbersome registration process, canceled registrations for administrative reasons unrelated to safety, and additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The domestic testing requirement is particularly burdensome for Highly Specialized Equipment (HSE), including servers, storage, printing machines, and information and communications technology (ICT) products that are installed, operated, and maintained by professionals who are trained to manage the product's inherent safety risks. These products pose little risk to the general public or consumers. U.S. companies have incurred significant expenses providing testing samples within limited time frames. The samples are also often destroyed during the safety testing process in Indian laboratories. Indian laboratories have also indicated that they do not have the capacity to test some products that require industrial power supply, exceed household or office voltage, or are very large in size and weight. Moreover, U.S. exporters are forced to leave their products in these laboratories for extended and undefined periods of time. To avoid unnecessary and overly burdensome requirements, the United States has recommended to the government of India that it should exclude HSE from the scope of the requirements, recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate re-testing requirements. The United States raised this issue bilaterally, including during technical exchanges under the TPF, and multilaterally in the WTO TBT Committee in 2019.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's SPS-related trade restrictions in bilateral and multilateral fora including the TPF, the WTO SPS Committee, and Codex. The United States will continue to make use of all available fora with a view to securing the entry of U.S. pork and other agricultural products, including alfalfa hay, cherries, strawberries, shrimp feed, and pet food, among others, into the Indian market.

Food – Product Testing

Importers have expressed concerns with FSSAI's batch-by-batch inspections at ports because of high costs and the detention of cargoes for indeterminate periods of time, which is particularly costly with respect to perishable products. In June 2015, India announced a plan to transition its imported food inspection protocol from batch-by-batch inspections and sampling to a risk-based approach. Indian officials have noted that they are actively working to develop and implement a risk-based inspection system. The United States continues to collaborate with India on developing more specific guidance and a timeline to fully transition its inspections protocols.

On April 1, 2016, the Indian Central Board of Indirect Taxes and Customs (CBIC) launched its Single Window Interface for Facilitating Trade (SWIFT) system. This is an initiative by the government of India

to streamline clearances for inbound consignments and to improve the ease of doing business. Along with SWIFT, the CBIC also introduced an Integrated Risk Management facility for partner government agencies. The facility is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that 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 samples would be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. Indian officials have noted that they are actively working to develop and implement a risk-based inspection system. However, market sources report that the risk-based inspection system is not yet fully operational.

Foods Derived from Biotechnology Crops

Biotechnology products must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. However, the FSSAI began drafting the regulations in 2018, and it may take several years to implement the regulations on GE foods. India's biotechnology approval processes are also slow, opaque, subject to political influences, and for the last several years, essentially non-functional. For example, GEAC's recent progress toward approving a public sector, domestically developed GE mustard plant variety for commercial cultivation was further delayed pending additional government review and the Indian government has yet to make a decision on whether to allow its sale. Consequently, soybean oil and canola oil derived from GE soybeans and canola remain the only biotechnology food or agricultural products currently approved for import into the Indian market, and biotechnology cotton is the only biotechnology crop approved for commercial cultivation in India. The 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 addition, India's labeling requirements for packages containing genetically engineered foods remains unclear.

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. Access to the Indian market for U.S. pork and pork products is currently restricted because India's Ministry of Animal Husbandry, Dairying, and Fisheries and the U.S. Department of Agriculture do not have a bilaterally agreed upon export certificate or protocol for importing U.S. pork and pork products into India. The United States continues to work with the Indian government to resolve the issue.

Poultry

In 2012, the United States commenced WTO dispute settlement proceedings against India due to India maintaining import prohibitions on various agricultural products, including poultry and poultry products, from the United States, ostensibly due to concerns regarding avian influenza. In 2014, the WTO panel issued its report, finding in favor of the United States. The Appellate Body affirmed these findings, concluding that India's restrictions: (1) are not based on international standards or a risk assessment that takes into account available scientific evidence; (2) arbitrarily discriminate against U.S. products; (3) are more trade restrictive than necessary; and (4) fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined. In 2016, the United States requested authorization from the WTO DSB to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the

“reasonable period of time” to which the parties agreed. The U.S. request was referred to arbitration. On April 6, 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India’s WTO obligations.

In March 2018, the United States and India agreed to veterinary export certificates for the shipment to India of U.S. poultry and poultry products. In 2019, the United States and India on several occasions postponed both the release of the Arbitrator’s decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding while the two sides discuss potential resolution of the dispute. In August 2019, India notified the WTO of an amended avian influenza policy allowing for regionalization in the event of disease outbreak. India’s timeline for ratification and implementation of this proposed policy is unknown. The United States continues to monitor market access issues related to poultry, such as unnecessary testing requirements.

Distillers’ Dried Grains with Solubles

India’s regulatory requirements on distiller’s dried grains with solubles (DDGS) remain unclear. In July 2018, the GEAC formed the Sub Committee on Guidelines for Imports of Animal Feed (SCGIAF) to establish procedures for applications related to the imports of animal feeds, including DDGS and soybean meal. During the past two years, GEAC has received 11 applications to import U.S. DDGS from Indian importers. Local feed companies, along with the U.S. Government continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product that are not living, and therefore pose no risk to the environment. To date, GEAC has not officially confirmed that they will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for DDGS continues to complicate the process. For example, on December 10, 2019, FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, FSSAI had not been regulating the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India.

Plant Health Issues

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that are not based on risk assessments and result in blocked U.S. grain and pulse imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date.

India, without prior notification, changed its inspection policy and practices for weed seeds, resulting in a rejection of a U.S. lentil shipment on October 18, 2019, for the presence of two weed seeds that were not previously on India’s published quarantine pest list of 31 weed seeds. On October 25, 2019, India published in its Gazette an updated quarantine pest list that included an additional 26 quarantine weed seeds, bringing the total number of quarantined pests to 57. Although the shipments were eventually released, this change held up over 200 U.S. containers of lentils at the ports of Chennai and Tuticorn.

The government of India’s requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States. In August 2004, the United States requested India to permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. On April 25, 2018, India’s MAFW confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas indefinitely until both parties come to an agreement on the U.S. systems-based approach.

SUBSIDIES

Export Subsidies

The Indian government's Foreign Trade Policy (FTP) 2015-2020 announced on April 1, 2015, is primarily focused on increasing India's exports of goods and services to raise India's share of world exports from 2 percent to 3.5 percent. The FTP consolidated many of India's existing export subsidies and other incentives into two main export incentive schemes: the Merchandise Exports from India Scheme (MEIS) and the Service Exports Incentive Scheme (SEIS). Under MEIS, exports of notified goods and products to notified markets as listed in Appendix 3B of the Handbook of Procedures, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified rate (2 percent to 5 percent, with temporary increases as high as 20 percent). MEIS provides export subsidies for a wide range of goods, including a wide variety of agricultural products, including certain dairy products, which also receive export subsidy support through state governments. Service suppliers of notified services as per Appendix 3E are eligible for freely transferable duty credit scrip at 5 percent of net foreign exchange earned. In addition, there are various other duty exemption and remission schemes such as the Advanced Authorization scheme, the Duty Free Import Authorization (DFIA) scheme, the Deemed Exports scheme, the Export Promotion Capital Goods (EPCG) Scheme, and the Export Oriented Unit (EOU) Scheme (which includes the Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme, and Bio-Technology Park (BTP) Scheme).

India also maintains several export subsidy programs, including exemptions from taxes, for certain export-oriented enterprises and for exporters in Special Economic Zones. Numerous sectors (*e.g.*, textiles and apparel, steel, paper, rubber, toys, leather goods, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but has also extended or expanded such programs and even implemented new export subsidy programs. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures. In July 2016, India announced subsidies intended to encourage employment generation in the garment sector in addition to providing refunds for state levies.

In 2017, India graduated from Annex 7 in the WTO, which means it must eliminate all export subsidies. In March 2018, the United States requested consultations on India's export subsidy schemes in the WTO and a dispute settlement panel was established on July 24, 2018. On October 31, 2019, the panel found that five Indian export subsidy programs provide prohibited subsidies that are inconsistent with India's WTO obligations. The Indian programs found to be inconsistent are the MEIS, the EOU scheme, the Special Economic Zones scheme, the EPCG scheme, and a duty free imports for exporters program. India appealed the panel report on November 19, 2019.

India is reportedly in the process of phasing out the MEIS program. The replacement program, Remission of Duties and Taxes on Export Product (RoDTEP), is anticipated to be released as part of the new Foreign Trade Policy in April 2020. RoDTEP is expected to be modeled after the Rebate on State and Local Taxes and Levies (RoSCTL) scheme, which is currently operated by the Ministry of Textiles and is limited to apparel and garment sector exports. Like MEIS, RoDTEP benefits are expected to be available for a broad range of products; in fact, press reports suggest that RoDTEP will surpass MEIS in terms of revenue forgone by India.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers but also to stabilize prices through open market sales. India uses export subsidies to reduce stocks and has permitted exports of certain agricultural commodities from government public-stockholding

reserves at below the government's costs. For example, the government authorized the exportation of 6.5 million tons of wheat from government-held stocks during August 2012 to May 2014 at varying minimum export prices significantly below the government's acquisition cost of \$306 per ton, plus storage, handling, inland transportation cost, and other charges for exports. In February 2014, the Indian Cabinet Committee on Economic Affairs made four million metric tons (MMT) of raw sugar eligible to receive export subsidies under a new, two-year subsidy program, which lapsed in September 2015. The United States, along with other interested Member countries, has raised this issue in the WTO Committee on Agriculture. Later in September 2015, the Indian government introduced the Minimum Indicative Export Quota (MIEQ) program to sell four MMT of sugar, which ran through June 2016. In March 2018, the Indian government re-introduced the MIEQ program to sell two MMT of sugar through September 2018. However, citing poor export sales, the program was extended by three months to December 2018 to meet the two MMT target.

Anticipating rising arrears for cane sugar mills and a large sugar stock, on August 28, 2019, the Cabinet Committee on Economic Affairs approved another sugar export subsidy of 10,448 Indian rupees (approximately \$149 per MT) for sugar mills during marketing year 2019/2020. The total expenditure for this program is expected to be approximately \$876.7 million. The subsidy is provided to cover marketing expenses and both internal and international freight charges. The Maximum Admissible Export Quantity allocated to sugar mills for this program is 6 million metric tons. The subsidy is paid directly to the farmers on behalf of the mills against payments that are due and any remaining balance would be paid to the mills.

Agriculture Subsidies

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs, such as fertilizer, fuel, electricity, and seeds, at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) scheme, which helps ensure that farmers receive minimum prices. Rice and wheat account for the largest share of products procured by the government and distributed through India's public distribution system. However, in crop year 2014/2015, the Indian government purchased 1.5 million tons (8.695 million 170 kg bales) of cotton through announced minimum support price operations, at a cost of nearly \$3 billion. The government's announcement of these MSPs can have the effect of providing a subsidy to the entire crop and distorting market prices and planting decisions. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the central government. Moreover, in certain years, some of the subsidized crop procured under MSP operations has been exported through private sector merchants and traders. Such high guaranteed MSPs and extensive government procurement can distort domestic market prices and incentivize overproduction, which restricts demand for imports and distorts international markets.

On May 4, 2018, the United States submitted the first-ever counter-notification (CN) to the WTO Committee on Agriculture highlighting, based on publicly available information, India's underreporting of its market price support (MPS) for rice and wheat for marketing years 2010/2011 to 2013/2014. The CN estimated MPS well above India's *de minimis* WTO commitment of 10 percent of the total value of production. Subsequently, on November 9, 2018, the United States submitted a CN on India's MPS for cotton covering marketing years 2010/2011 to 2016/2017, estimating MPS for cotton in various years ranging between 53 and 81 percent – well above India's WTO commitment of 10 percent of the total value of production. In addition, on November 16, 2018, Australia submitted a CN on India's MPS for sugarcane covering marketing years 2011/2012 to 2016/2017. Australia's CN estimates that India's MPS for sugarcane ranged from 78 percent to 100 percent, without taking into account substantial state-level support administered by several states.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. Multiple procurement rules, guidelines, and procedures issued by multiple bodies have resulted in problems with transparency, accountability, competition, and efficiency in public procurement. A recent World Bank report stated that there are over 150 different contract formats used by the state-owned Public Sector Undertakings, each with different qualification criteria, selection processes, and financial requirements. The government also provides preferences to Indian micro, small, and medium enterprises and to state-owned enterprises. Moreover, in defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services, a requirement that continues to prove challenging for manufacturers of high-technology equipment.

In March 2016, the Indian Ministry of Defense announced a new Defense Procurement Procedure that increased the offset threshold for mandatory local content to 20 billion Indian rupees (approximately \$300 million) for defense industry companies contracting with the Indian government and also increased indigenous content requirements, although flexibility may exist for certain projects. In May 2017, the Indian Cabinet approved a public procurement policy to give preference to domestically manufactured goods with a view to promote the "Make in India" initiative. The move is aimed at facilitating local manufacturing and boosting domestic demand for locally manufactured products. As part of this May 2017 policy, the Ministry of Defense approved a model for Strategic Partnerships in certain acquisition programs, although the strong focus on mandatory technology transfer has given many U.S. companies reason to exercise caution regarding participation. A local content requirement has also been extended to the procurement of medical devices, and several government tenders in the last year have included a 30 percent local content mandate.

India's National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information communications technology and clean energy). Consistent with this approach, India issued the Preferential Market Access notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. Subsequently, in June 2017, the Department of Industry Policy & Promotion issued two notifications under the Public Procurement "Preferential Electronics Order" and "Cyber Notification" to state governments and central agencies mandating preferences for domestically manufactured electronic goods, which include hardware, for the purpose of government procurement as well as, more recently, cyber security software products. The notification indicates that this requirement will apply to procurement by government, government companies, and other procuring entities. This notification is the culmination of similar Indian policy proposals that have outlined discriminatory government procurement policies as a means to stimulate domestic manufacturing of electronics and telecommunications equipment at the expense of foreign companies that have invested heavily in India.

India is not a party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 2010.

INTELLECTUAL PROPERTY PROTECTION

India remained on the Priority Watch List in the 2019 Special 301 Report due to concerns over weak intellectual property (IP) protection and enforcement. The United States and India have held regular discussions on the range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

Developments over the past year include India's continued efforts to reduce delays and backlogs of patent and trademark applications, the Cell for IPR Promotion and Management's (CIPAM) promotion of IP awareness and commercialization throughout India, and ongoing efforts to improve IP enforcement, particularly at the state level. However, state-level IP enforcement remains a critical concern in India. While the IP Crime Units in Maharashtra and Telengana continue to conduct enforcement activities, this stands in contrast to the lack of activity in other states.

In the field of copyright, procedural hurdles, problematic policies, and effective enforcement remain concerns. In December 2018, India released for public comment the Cinematograph Act (Amendment) Bill, which contained anti-camcording legislation. The bill still awaits approval by Parliament. In addition, in April 2017, India announced that its Copyright Board would merge with the Intellectual Property Appellate Board and that following the merger one chairman would oversee both. However, the most recent chairman retired in early 2019, and a lack of leadership and technical experts has stalled patent and copyright matters. The lack of a functional copyright board has so far created uncertainty regarding how IP royalties are to be collected and distributed. Until a new Chairman and copyright technical member are appointed, the copyright board will continue to be non-functional. The expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses continue to raise concerns regarding the strength of copyright protection and complicate the market for music licensing.

In the area of patents, a number of factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. For example, in 2019, India provided draft changes to its "Statement of Working of Patents" (Form 27) for public comment. However, if the proposed changes to Form 27 became effective, it would still raise concerns for innovators due to its burdensome nature and continued requirements to disclose sensitive business information. While certain administrative decisions in past years have upheld patent rights, and specific tools and remedies do exist in India to support the rights of a patent holder, concerns remain over revocations and other challenges to patents, particularly patents for agriculture technology and pharmaceutical products. The United States also continues to monitor India's application of its compulsory licensing law. Moreover, the Indian Supreme Court's 2013 decision that India's Patent Law created a second tier of requirements for patenting certain technologies, such as pharmaceuticals, continues to be of concern as it may limit the patentability in India for an array of potentially beneficial innovations. In recent years, Indian governmental policies and court rulings have raised serious concerns over India's innovative environment for agricultural biotechnology. In particular, the May 2016 draft Licensing and Formats for GM Technology Agreement Guidelines would have created a system of mandatory licensing with overly prescriptive terms that, if implemented, would undermine market incentives critical to the agricultural biotechnology and other innovative sectors. These guidelines, however, have not been implemented. Court rulings from 2018 also raised additional questions about the patentability of these important technologies in India. India has been an accessing office for the World Intellectual Property Organization's (WIPO) Centralized Access to Search and Examination (CASE) system. It has also become a WIPO Digital Access Service participating office and has begun providing its own documentation for the CASE system, all of which aid patent examination in India and other participating national and regional offices.

India currently lacks an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural products. The U.S. Government and stakeholders have also raised concerns with respect to allegedly infringing pharmaceuticals being marketed without advance notice or opportunity for parties to resolve their IP 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. In 2016,

India's National IPR Policy called for trade secrets to serve as an "important area of study for future policy development," but India has not yet prioritized or embarked upon this work.

Notably, the Department for Promotion of Industry and Internal Trade (DPIIT) launched an electronic learning website and mobile application developed by CIPAM in collaboration with Qualcomm and the National Law University. This platform is intended to enhance innovators' and entrepreneurs' understanding of IP with the goal of helping them to integrate IP into their business models and obtain value for their research and development efforts. On June 3, 2019, DPIIT proposed and published draft Copyright Amendment Rules, 2019 ("Draft Rules") for public comment to ensure compliance with the Copyright Act in light of technological advances and bring copyright rules into parity with other relevant legislation. The Draft Rules feature, among other items, a revised definition of the term "broadcasting." The revised definition would cover digital transmissions, thereby permitting statutory licensing under Section 31D of the Copyright Act for all such transmissions, including Internet broadcasts, rather than limiting licenses to traditional television and radio broadcasts. U.S. stakeholders have raised concerns as to this aspect of the Draft Rules, and the United States is monitoring the situation.

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, prohibited entirely. In addition, barriers to digital trade and electronic commerce, such as those recently imposed on electronic payment providers, have knock-on effects on a wide variety of services.

Audiovisual Services

U.S. companies have reported that India's satellite programming downlinking policy is overly burdensome, including the requirement for foreign programmers to establish a registered office in India or designate a local agent. Programmers must also prove that they have a net worth of 50 million rupees (approximately \$800,000) in order to downlink one content channel and an additional 25 million rupees (approximately \$400,000) of net worth for each additional channel.

The Telecommunications Regulatory Authority of India's regulations on content aggregation and distribution do not allow bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled into and sold by domestic partners without a large local presence or sales force. These regulations cause particular difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters that they seek to target.

There are also a number of limits on foreign ownership in the audiovisual and media sectors: cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and newspapers (26 percent). In August 2019, the Indian government allowed FDI of up to 26 percent for digital media firms that upload and stream news and current affairs.

Distribution Services

India imposes certain restrictions on FDI in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized

enterprises. India has modified the requirements in recent years, including by allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains. Despite these modifications, the local content requirements remain prohibitive for certain retailers with highly specialized supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent, and 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 under \$2 million. The local sourcing requirements and other conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India’s retail sector.

India permits 100 percent FDI in business-to-business (or “marketplace-based”) electronic commerce, but prohibits foreign investment in business-to-consumer (or “inventory-based”) electronic commerce. On February 1, 2019, India implemented new regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies’ sites. The new rules also prohibit exclusivity arrangements by which electronic commerce retailers can offer a product on an exclusive basis. The only exceptions for FDI in inventory-based electronic commerce are for food product retailing and single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of many electronic commerce service suppliers to serve the Indian market.

Indian states have periodically challenged the activity of direct selling (*i.e.*, the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in this sector. This central government legislation contains no clear distinction between fraudulent activities and legitimate direct-selling operations. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act, including the arrest of a chief operating officer of a direct-selling company. In 2016, after extensive advocacy by the U.S. government and private industry, India approved new guidelines governing direct selling that established clear legal definitions of direct selling, but enforcement and application of the new guidelines is still left to state authorities.

Education Services

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 a report to the Prime Minister’s Office and the Human Resource Development Ministry calling for the invitation of foreign universities to set up campuses in India. However, no action has been taken to date with respect to the report’s recommendations.

Financial Services

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most privately owned banks are Indian-owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered by non-transparent limitations on branch office expansion.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than five percent of an Indian private bank without approval by the Reserve Bank of India (RBI). Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent.

Insurance Services

Under India's Insurance Laws (Amendment) Act, 2015, foreign investment in Indian insurance companies is capped at 49 percent. The law further requires that all insurance companies be Indian "controlled." The Insurance Regulatory and Development Authority of India (IRDAI) has promulgated guidelines (October 19, 2015) on this "Indian control" requirement. The guidelines include: (1) a mandatory requirement that a majority of directors be nominated by Indian investors; (2) limitations on the rights of foreign-nominated board members; (3) requirements for how "key management persons" are to be appointed; and (4) requirements on the manner in which control over "significant policies" of the enterprise must be exercised. Foreign investors have expressed concern that the requirements create a rigid structure that ignores operational realities and will dilute the rights of foreign investors in Indian insurance companies, making additional FDI in the sector unattractive.

In December 2015, the IRDAI issued a revision to its regulations governing the provision of reinsurance services in India that affords Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the business for which foreign reinsurers can compete and decreases the interest of foreign reinsurers in establishing branches in India, resulting in negative impacts to the supply and cost of reinsurance services in the Indian market. In December 2018, IRDAI reaffirmed that the state-owned General Insurance Corporation of India maintained the right of first refusal for all reinsurance contracts.

Professional Services

Legal Services

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory "to practice law" in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign law and diverse international legal issues. The United States and India continue to discuss liberalization of legal services under the TPF.

Accounting Services

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Architecture Services

Although Indian companies continue to demand high-quality U.S. design for new buildings and infrastructure development, foreign architecture firms find it difficult to do business in India due to the legal environment. Court cases against foreign design firms seeking to perform work in India and harassment of their potential clients creates uncertainty for U.S. providers of architectural and related services, causing significant losses for those companies.

Telecommunications Services

Barriers to Entry

Indian government approval is required for FDI above 49 percent in wireless and fixed telecommunications services, and India's one-time licensing fee for telecommunications providers (approximately \$500,000 for a service-specific license or \$2.7 million for an all-India Universal License) serves as a barrier to market entry for smaller companies. The government of India continues to hold equity in multiple telecommunications firms, raising concerns about the fairness of India's telecommunications policies.

Remote Access Policy

Global telecommunications operators have made significant investments in India's network infrastructure. However, telecommunications operators face significant challenges in their ability to remotely access their networks due to a requirement to obtain pre-approval for each remote access site. Delays of as much as a year in gaining such approval leave operators unable to remotely configure and operate their networks, hampering network security and undermining services suppliers' ability to operate networks efficiently.

Satellite Services

India's Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for delivery of DTH subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which, in turn, resells the capacity to the end-user with a surcharge.

Foreign satellite operators are thus prevented from developing direct relationships with DTH licensees. This puts U.S. satellite operators at a competitive disadvantage and promotes market uncertainty. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

India also imposes onerous licensing requirements on foreign satellite-based personal communications services. Licenses require high application fees and bank guarantees as well as prohibitively expensive

capitalization requirements. Further, licensees must construct local ground station facilities before offering service. In addition, the use of any kind of satellite phone in India requires a license, and the use of foreign satellite phones in Indian waters is prohibited entirely. Together, these requirements make it economically unfeasible for many foreign satellite communications providers to offer services in India.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

India has recently proposed and promulgated a number of data localization requirements that would serve as significant barriers to digital trade between the United States and India. These requirements raise costs for service suppliers that store and process personal information outside India by forcing the construction or use of unnecessary, redundant local data centers. For smaller foreign firms that cannot afford redundant computing facilities within India, these requirements could serve as a total market access barrier.

In 2018, the RBI implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice and without input from stakeholders. In June 2019, RBI stated that the requirement to store payments data locally also applies to banks operating in India. Requiring local storage of all payment information raises costs for service suppliers, and disadvantages foreign firms, which are more likely to be dependent on globally distributed data storage and information security systems. Furthermore, an only-in-India data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their networks.

In December 2019, the Indian government introduced in India's Parliament the Personal Data Protection Bill, 2019. The bill would require firms to store a copy of all "sensitive" and "critical" personal information related to Indian persons on a server located in India. Such "mirroring" requirements are ineffective in enhancing the protection of personal data and often weaken data security. The bill would also impose onerous conditions on the cross-border transfer of "sensitive" personal information, including "explicit consent" by the data principal. "Critical" personal information—an undefined category—could not be transferred out of India under any circumstances. These provisions would undermine the ability of foreign firms to supply many services to Indian consumers on a cross-border basis, and would not support the privacy of personal information.

In September 2019, MEITY constituted the Committee of Experts to develop a governance framework for "community data," which may result in policies requiring localization of non-personal data. MEITY has also established a Working Group on Cloud Computing tasked with formulating a framework for promoting and enabling cloud services in India and examining the cybersecurity and privacy aspects of cloud computing. Recent reports indicate that the Working Group may recommend broad data localization requirements for cloud computing service suppliers.

India is currently developing a new electronic commerce policy, early drafts of which have contemplated broad-based data localization requirements and restrictions on cross-border data flows, expanded grounds for forced transfer of intellectual property and proprietary source code, and preferential treatment for domestic digital products. The United States strongly encourages India to reconsider this draft policy and particularly the measures described above.

India's 2015 National Telecom M2M (machine to machine) Roadmap (Roadmap) would require all M2M gateways and application servers serving customers in India to be located within India. The Roadmap also recommends that foreign subscriber identification modules (SIMs) be permitted in devices to be used in India only if they fulfill traceability criteria and that machines sold and manufactured in India should only

be equipped with SIMs of Indian telecommunications providers. The Roadmap has not been implemented but continues to create uncertainty related to India's policy environment for digital services.

Technology

Cloud computing service suppliers face a number of barriers when providing services in India. Service suppliers are unable to buy dark fiber needed to build new networks, are prohibited from purchasing dual-use equipment needed to run networks, and are unable to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point. These restrictions affect the ability of cloud services to effectively manage their own networks.

Internet Services

India's national, state, and local governments regularly shut down Internet services in response to local unrest or to suppress certain digital content and services. Observers tallied over 130 separate shutdowns in India in 2018 and 95 shutdowns in 2019. Such shutdowns—even if temporary—undermine the value of Internet-based services to their customers and impose costs on local firms that depend on these services for their business.

The absence of a safe harbor framework for Internet intermediaries related to non-IP-protected content shared by third parties discourages investment in Internet services that depend on user-generated content. India's 2011 Information Technology Rules have provided an insufficient shield for online intermediaries from liability for non-IP third-party user content: any citizen can complain that certain content is "disparaging" or "harmful," and intermediaries must respond by removing that content within 36 hours. Draft regulations announced in late 2018 (the "Information Technology (Intermediary Guidelines) Rules 2018") threaten to further worsen India's intermediary liability protections. These draft rules would require platforms to become proactive arbiters of "unlawful" content, shifting the onus of the state to private parties. If these draft rules come into force, they will incentivize overly restrictive approaches to policing non-IP user-generated content and will undermine many Internet-based platform services.

Furthermore, the Intermediary Guidelines would require intermediaries to "enable tracing out" of "originators" of information. For services that employ encryption, this appears to require them to break that encryption. Encryption is an important tool for protecting the privacy and security of data. Many services employ end-to-end encryption and do not retain the technical means to decrypt communications carried out through their services. If enforced, this requirement could force service suppliers to undermine the privacy and security of their services, and potentially violate contractual terms and conditions related to data privacy and access to enterprise data.

In 2017, India began assessing a 6 percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The current structure of the equalization levy represents a shift from internationally accepted principles, which provide that digital taxation mechanisms should be developed on a multilateral basis in order to prevent double taxation. This levy may impede foreign trade and increase the risk of retaliation from other countries where Indian companies are doing business.

INVESTMENT BARRIERS

Local Content Requirements

In 2010, India initiated the Jawaharlal Nehru National Solar Mission (JNNSM), which currently aims to bring 100,000 megawatts of solar-based power generation online by 2022, as well as to promote solar module manufacturing in India. Under the JNNSM, India imposes certain local content requirements (LCRs) for solar cells and modules and requires participating solar power developers to use solar cells and modules made in India in order to enter into long-term power supply contracts and receive other benefits from the Indian government.

The United States challenged these LCRs through the WTO dispute settlement system. In February 2016, a WTO panel found India's LCRs inconsistent with multiple WTO requirements. These findings were affirmed by the Appellate Body on September 16, 2016, and the DSB adopted the Appellate Body and panel reports on October 14, 2016. On December 19, 2017, the United States requested authorization from the DSB to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" that the parties agreed to. The United States' request was referred to arbitration. On January 23, 2018, India requested the establishment of a compliance panel, asserting that it had complied with the DSB recommendations. The arbitration and compliance panel proceedings are ongoing.

OTHER BARRIERS

Export Duties

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 percent and 15 percent, respectively, to 20 percent on both and further increased the export duty to 30 percent in January 2012. A 5 percent *ad valorem* export duty on iron ore pellets has been in place since January 2014. Iron ore containing less than 58 percent iron has also been subject to a 10 percent export duty since May 2015. In March 2016, the government of India unified the rate of export duty for all types of iron ore (other than pellets) at 20 percent. These various export duties affect international markets for raw materials used in steel production.

In addition to the steel-related export duties, India's March 2017 budget also imposed a 15 percent duty on exports of aluminum ores, including laterite. India has also maintained, since February 2012, a 30 percent *ad valorem* duty on exports of chromium ore.

Transparency

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. In February 2014, India's Ministry of Law and Justice issued a policy on pre-legislative consultation, which was to be applied by all ministries and departments of the central government before any legislative proposal was to be submitted to the Cabinet for its consideration and approval. The policy also required central government entities to publish draft legislation or a summary of information concerning the proposed legislation for a minimum period of 30 days. Issuance through electronic media was also encouraged in the policy, as were public consultations. However, despite U.S. requests, the Indian government has provided no information on the implementation of the policy, other than to clarify it is only intended to apply to draft legislation, not regulations or tariff-setting.

In addition, in May 2016, the Indian Supreme Court made a judgement concerning the Telecom Regulatory Authority of India in which it recommended that India's Parliament "frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions." U.S. stakeholders continue to report new requirements that are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, diminishing the ability of U.S. companies to enter or operate in that market and inhibiting India's overall business environment. The United States continues to raise concerns regarding uniform notice and comment procedures with the government of India, both bilaterally in the TPF and multilaterally in the WTO and other fora.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was \$12.4 billion in 2019, a 2.2 percent decrease (\$277 million) over 2018. U.S. goods exports to Indonesia were \$7.8 billion, down 5.1 percent (\$413 million) from the previous year. Corresponding U.S. imports from Indonesia were \$20.2 billion, down 3.3 percent. Indonesia was the United States' 34th largest goods export market in 2019.

U.S. exports of services to Indonesia were an estimated \$2.6 billion in 2018 (latest data available) and U.S. imports were \$1.2 billion. Sales of services in Indonesia by majority U.S.-owned affiliates were \$2.8 billion in 2017 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were \$113 million.

U.S. foreign direct investment (FDI) in Indonesia (stock) was \$11.1 billion in 2018, a 26.6 percent decrease from 2017. U.S. direct investment in Indonesia is led by mining, nonbank holding companies, and depository institutions.

TRADE AGREEMENTS

Indonesia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Indonesia, also has preferential trade agreements with Australia, China, Hong Kong India, Japan, Korea, and New Zealand and concluded text-based negotiations of the Regional Comprehensive Economic Partnership in November 2019. Indonesia has signed bilateral free trade agreements (FTAs) with Australia, Chile, Mozambique, as well as with Iceland, Liechtenstein, Norway, and Switzerland under the European Free Trade Association, but as of the end of 2019, none of these FTAs are yet in force except with Chile. Indonesia recently concluded negotiations with Korea on a Comprehensive Economic Partnership Agreement. Indonesia is negotiating other FTAs with the European Union (EU), India, Tunisia, and Turkey as well as reviewing its trade agreements with Japan and Pakistan.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Indonesia's average Most Favored Nation (MFN) applied tariff rate was 8.1 percent in 2018 (latest data available). Indonesia's average MFN applied tariff rate was 8.6 percent for agricultural products and 8.0 percent for non-agricultural products in 2018 (latest data available). Indonesia has bound 96.3 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 37.1 percent.

Indonesia periodically changes its applied rates and over the last ten years has increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Indonesia's simple average WTO bound tariff rate is much higher than its average applied tariff. Most Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, although tariff rates exceed 35.5 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 35.5 percent. Under Minister of Finance (MOF) Regulation 112/2018, Indonesia levies an import duty of 7.5 percent on certain

goods (known as “consignment goods”) imported by businesses regardless of the tariff rate in Indonesia’s WTO and FTA schedules, if the Free On Board (FOB) customs value of the good is more than \$75 but less than \$1,500.

Taxes

U.S. companies continue to raise concerns about the apparently arbitrary nature of MOF’s Directorate General of Taxes’ tax assessment process, including a discretionary and cumbersome auditing process, heavy fines for administrative mistakes, lengthy dispute mechanisms, and a lack of legal precedent within the Tax Court.

In 2018, Indonesia issued MOF Regulation 110/2018, increasing “withholding tax” rates for 1,147 imported products, including: (1) from 2.5 percent to 7.5 percent for 719 consumer goods (*e.g.*, audio-visual equipment, textiles); (2) from 2.5 percent to 7.2 percent for 218 daily necessities (*e.g.*, shampoos, cosmetics); and (3) from 7.5 percent to 10 percent on 210 luxury goods. The stated objective for this policy was to decrease Indonesia’s current account deficit by reducing imports of these goods.

Luxury goods, imported or locally produced, may be subject to a luxury tax of up to 200 percent. However, currently there are no luxury goods subject to the 200 percent rate, and the applied luxury tax rates generally range from 10 percent to 75 percent. Imported passenger vehicles with an engine displacement over three liters or motorcycles with an engine displacement over 500 cc are currently subject to a 125 percent luxury tax. The combined effect of this luxury tax, a maximum of 50 percent tariff, a 10 percent value-added tax (VAT), and the prohibition of motorcycle traffic on Indonesia’s highways severely restricts U.S. motorcycle exports to Indonesia. MOF Regulation 35/2017 revised the type of goods classified as “luxuries” subject to the sales tax on luxury goods. Although Indonesia has eliminated its luxury tax on imported distilled spirits, the current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. Excise tax rates are 150 percent on spirits and 90 percent on wine.

Nontariff Barriers

Import Licensing

Indonesian importers must comply with numerous and overlapping import licensing requirements that impede market access. Under Minister of Trade (MOT) Regulation 70/2015, all importers must obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P), but importers are not permitted to obtain both types of licenses. In response to stakeholder concerns, MOT issued Regulation 118/2015, which allows companies that operate under an API-P import license to import finished products for market testing, after sales service purposes, or for “completing a product line,” as long as the goods are new, consistent with the company’s business license, and meet import requirements. Importers must also obtain a business identification number and register on the Online Single Submission, a single window system for business license issuance.

Under MOT Regulation 82/2012 (last amended by MOT Regulation 41/2016) and Ministry of Industry (MOI) Regulation 108/2012, Indonesia imposes burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*For further information, see the Services Barriers section.*)

Import Licensing for Agricultural Products

Since at least 2012, Indonesia has maintained unjustified and trade-restrictive licensing regimes for the importation of horticultural products, animals, and animal products. Indonesia has amended its import licensing regimes several times, adding additional trade-restrictive requirements. Because Indonesia

repeatedly failed to address U.S. concerns, in 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on 18 out of 18 claims and finding that Indonesia is applying import restrictions and prohibitions that are inconsistent with WTO rules. On November 9, 2017, the WTO Appellate Body rejected Indonesia's appeal and upheld the panel's findings that each of the challenged measures is WTO-inconsistent. On August 2, 2018, the United States requested authorization from the WTO to take countermeasures. On August 14, 2018, Indonesia objected to the U.S. request, referring the matter to arbitration. That arbitration is pending. Since 2018, the United States has paused the arbitration to give the parties the opportunity to work towards a solution to the dispute and to increase market access for U.S. agricultural products. Although Indonesia has amended its import licensing requirements several times since July 2017, Indonesia has continued to fail to bring its measures into compliance. Resolution of licensing issues remains a high priority for horticultural exporters, and both parties remain engaged in dialogue to resolve these issues.

Pharmaceutical Market Access

The pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement within the Indonesian pricing and reimbursement system. Stakeholders report a lack of clarity and certainty regarding how pharmaceutical products are selected for listing on the Indonesian National Formulary, how price caps are determined, and whether and for how long such products will remain on the formulary. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) have regular meetings with U.S. stakeholders to discuss these issues.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. In 2018, MOI produced a draft regulation that would implement Presidential Instruction 6/2016, on Acceleration of the Development of Pharmaceutical and Medical Device Industries, and establish a detailed local content calculation methodology for pharmaceutical products sold in Indonesia. The draft regulation defines local content in pharmaceutical product as including manufacturing, raw ingredients, research and development, and packaging. Although the minimum local content level is still undefined, MOI officials have said publicly that they are considering a 20 percent minimum local content for pharmaceutical products. In addition, MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industry prioritize the utilization of domestic raw materials. Businesses are concerned that the calculation of local content will be a requirement to be able to participate in the national social security system (JKN) procurement or electronic catalogue system.

Additionally, MOH Regulation 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, Regulation 1010/2008 mandates local manufacturing in Indonesia of all pharmaceutical products that are five years past patent expiration and contains a technology transfer requirement. A subsequent pair of regulations, MOH Regulation 26/2018 and an updated regulation on drug registration from Indonesia's National Agency of Drug and Food Control (BPOM), most recently revised in Regulation 16/2015, provide additional information about the application of the local manufacturing requirements.

Ethanol Market Access

Pertamina, Indonesia's state-owned oil and natural gas company, prohibits the inclusion of ethanol in finished fuel imports through an exclusionary clause in tenders. This prohibition stems from a decision within Pertamina's marketing division, rather than from any technical regulation that Indonesia maintains. Removing this prohibition is seen as a key step to opening the market for U.S. ethanol. Additionally, Indonesia maintains a 30 percent duty on ethanol imports that is not applicable to imported finished fuels

blended with ethanol. Further challenges include technical barriers regarding storage, blending, and distribution, as well as concerns over availability of supply. The United States will continue to engage Indonesia on these issues in order to lay the groundwork for a long-term pathway for direct imports of ethanol. According to industry analysis in 2019, Indonesia is estimated to be a 1 billion gallon market for U.S. ethanol, valued at \$1.7 billion.

Import Bans and Restrictions

Indonesia imposes restrictions on feed corn imports, limiting the right to import to the state-owned procurement body, the Bureau of Logistics (BULOG). However, some corn imports intended for starch manufacturing are allowed. As Indonesia's sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Other feed millers are obligated to use locally produced feed corn, but have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry's growth.

Indonesia bans salt imports during the domestic agricultural harvest season. It requires salt importers to be registered and to purchase domestic supplies as well as imports. Indonesia also maintains a seasonal ban on imports of sugar, in addition to limiting the annual quantity of sugar imports based on domestic production and consumption forecasts.

Indonesia applies quantitative limits on the importation of wines and distilled spirits. Companies must apply to be designated as registered importers authorized to import alcoholic beverages, with an annual company-specific quota set by MOT.

Product Testing

BPOM sets out requirements for testing of heavy metals in food, drugs, and cosmetics in its Regulation 17/2014. BPOM Regulation 12/2015 provides further guidance on these requirements, which is fulfilled through a certificate of analysis. A 2016 BPOM circular letter extended a certificate's validity from six months to one year. In practice, Indonesian customs requires each shipment to provide a separate test in addition to the certificate. This measure appears intended to limit imports and adds unnecessary costs. In addition, in the case of cosmetics, U.S. and other stakeholders have expressed concern that the pre-market testing requirement goes against the intent of the ASEAN Cosmetics Directive, which stipulates that monitoring of heavy metals should be undertaken via post-market surveillance.

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 Ministry of Agriculture (MOA) importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017 and 58/2018, the Indonesian government sets farmer level and consumer level reference prices for rice, corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other state-owned enterprises (SOEs) can intervene in the market when prices surpass or are below threshold targets.

In practice, BULOG's market operations are primarily done in the rice sector where BULOG has sold rice from its stock to dampen high domestic rice prices. In the past, BULOG has also imported low-priced Indian buffalo meat, which is sold at set prices for low-income consumers to keep a lid on beef prices during the peak demand time of Ramadan. In 2018, MOT removed rice as one of the commodities for which retail reference prices are set, but continues to maintain reference prices for rice, corn, soybeans, sugar, shallots, beef, farm-raised chicken, chicken eggs, and cooking oil.

Customs Barriers and Trade Facilitation

U.S. firms continue to report that Indonesian customs relies on a schedule of reference prices to assess duties on some imports rather than using transaction values as required by the WTO Customs Valuation Agreement. Indonesia's Director General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days.

MOT Regulation 87/2015 requires pre-shipment verification on a broad range of products (including electronics, textiles and footwear, toys, food and beverage products, and cosmetics) by designated companies (known in Indonesia as "surveyors"). The verifications come at the importer's expense and impede the entry of imports to designated ports and airports. Further, Indonesia has yet to notify the WTO of these measures pursuant to the WTO Agreement on Preshipment Inspection as of the end of 2019.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards and Testing Requirements

MOI Regulation 24/2013 (as revised by MOI Regulations 55/2013 and 29/2018) requires a mutual recognition agreement for the acceptance of test reports from laboratories outside of Indonesia. The United States is not aware of any existing mutual recognition agreements, leaving imported toys subject to mandatory testing in Indonesia to obtain certification. U.S. stakeholders have expressed concern about the frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. However, in 2018, MOI issued Regulation 29/2018, further amending Regulation 24/2013 and introducing an alternative scheme that allows importers to obtain a certification valid for four years through product testing and an audit of production processes. U.S. manufacturers remain concerned by the lack of clarity on how products can enter the market under the new scheme. The United States will continue to raise concerns over toy standards bilaterally and in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Halal Certification

In September 2014, Indonesia passed Law 33/2014 on Halal Product Assurance, which makes halal certification mandatory for food, beverages, pharmaceuticals, cosmetics, medical devices, biological products, genetically engineered products, consumer goods, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. In 2017, the Indonesian government officially established the Halal Product Assurance Agency (BPJPH) under the Ministry of Religious Affairs (MORA) to lead the implementation of halal certification.

MORA is developing regulations to implement Law 33/2014 and, in cooperation with the Ministry of Finance, is in the process of determining halal certification fees. In May 2019, Indonesia issued

Government Regulation 31/2019, which was the first of several expected implementing regulations of Law 33/2014. In October 2019, Indonesia notified to the WTO TBT Committee the final draft of a MORA implementing regulation, which sets out a transition period whereby halal requirements will go into force for food and beverage products by October 2024, and between 2026 and 2034 for other product categories.

Indonesia has also expressed the need for a Mutual Recognition Agreement for recognition of foreign government halal certificates, which would not be possible in the United States as there is no U.S. Government halal certification or accreditation body. However, in response to U.S. Government comments on MORA's draft implementing regulation, Indonesia confirmed that U.S. halal certifiers can continue to be recognized without an agreement between the U.S. Government and BPJPH. In 2018, MUI provided two-year extensions for five U.S. halal certifying bodies designated to issue certifications for meat and food exports to Indonesia. In November 2019, MORA issued Decree 982/2019, which allows MUI to continue to provide certification until the Ministry of Finance finalizes legislation concerning halal certificate service fees (after which time BPJPH will provide halal certification for new products). Indonesia has said that U.S. halal certifying bodies will need to seek approval three months prior to expiration of their MUI approval and that new approvals will be valid for four years. The United States will continue to monitor developments and continue to engage with Indonesia on these issues, including in the WTO TBT Committee.

Labeling and Advertisement of Food Regulation

In 2016, BPOM released a draft regulation on food labeling and advertising, to implement provisions of Law 18/2012 on food. Among other things, this draft regulation would prohibit advertising of milk products for children up to two years of age and prohibit functional claims on foods for children under three years of age. It is unclear when Indonesia intends to finalize this draft regulation. The United States has asked Indonesia to notify the measure to the WTO TBT Committee before finalizing it.

Sanitary and Phytosanitary Barriers

Beef and Pork

Indonesia requires each U.S. meat establishment seeking to export to Indonesia to complete an extensive questionnaire that includes proprietary information, and to be inspected by Indonesian inspectors, before it can ship meat to Indonesia. The United States has raised concerns about this approval system with Indonesia repeatedly, including at the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) and in bilateral interactions, and will continue to raise concerns in WTO and bilateral fora. In 2016, Indonesia conducted an audit in the United States and approved 10 new meat plants to export.

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 MOA. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. To date, Indonesia has not notified the law to the WTO SPS Committee. After a 2011 audit of the U.S. food safety system for dairy products, Indonesia agreed to a simplified questionnaire for U.S. dairy facilities seeking to pre-register for review and approval. The United States is continuing to work with Indonesia to further improve the system under which U.S. establishments become eligible to export dairy products to Indonesia.

Inspection Fees

In 2017, MOA began applying inspection fees on all animal product establishments seeking to export to Indonesia under Government Regulation 35/2016. These inspections are mandatory to obtain export eligibility certificates and consist of a “desk audit” of application materials (\$1,200), an on-site facility inspection (\$925 per auditor, per day), and a post-audit desk review (\$1,200). U.S. exporters must also pay for MOA officials’ transport and lodging costs while conducting inspections in the United States. In total, companies seeking to export to Indonesia could pay up to \$10,000 for an inspection.

Horticulture

MOA Regulation 55/2016 establishes requirements for countries wishing to export “Fresh Food of Plant Origin” to Indonesia. The regulation specifies that Indonesia must recognize either the food safety system of an exporting country or a registered food safety testing laboratory serving that country’s exporters. In 2016, Indonesia recognized the U.S. food safety system under this regulation. In January 2018, Indonesia renewed this recognition for another two years. (*For further information, see the Customs Barriers section.*)

SUBSIDIES

In May 2019, for the first time in over twenty years, Indonesia filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). Indonesia’s notification only covered subsidy programs in the fisheries sector. In response to questions regarding Indonesia’s most recent WTO Trade Policy Review (TPR) in 2013, Indonesia indicated that it was pursuing support policies to, *inter alia*, improve export performance and develop downstream industries, but it provided few details regarding specific measures. According to the WTO Secretariat Report on the 2013 TPR, Indonesia provides fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, as well as assistance on land acquisition, licensing, investment, and labor. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidies programs.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations 54/2010 and 38/2015 both require procuring entities to seek to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Presidential Regulation 38/2015 applies to infrastructure projects where the Indonesian government is the project manager, and the corresponding entities – whether SOEs, domestic companies, or foreign companies – do not receive state budget allocations or capital injections for infrastructure procurement. Presidential Regulation 54/2010 applies to projects where the government is the project manager and the corresponding entities receive state budget allocations. Both regulations provide general minimum requirements for local content and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements.

Indonesia’s 2012 Defense Law and Presidential Decree 76/2014 mandates priority for local materials and components and requires defense agencies to use locally produced goods and services whenever available.

In addition, when an Indonesian government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for “trade balancing” offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof. The amount of local content required starts at 35 percent, and increases in 10 percent increments every five years until the value of local content is equal to 85 percent. Numerous details, including specifics for multiplier values, remain undetermined.

Indonesia is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since October 2012.

INTELLECTUAL PROPERTY PROTECTION

Indonesia remained on the Priority Watch List in the 2019 Special 301 Report. While Indonesia has taken some positive steps in recent years, including efforts to address online piracy, implementation of copyright and trademark reforms, and continued educational outreach to the Indonesian public to advance intellectual property (IP) awareness, the United States remains concerned about gaps in Indonesia’s laws relating to IP protection and enforcement.

Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) remain key concerns. The Mangga Dua Market in Jakarta continues to be included in the 2018 Out-of-Cycle Review of Notorious Markets, along with multiple online Indonesian marketplaces. Lack of enforcement also remains a problem, and the United States continues to urge Indonesia to increase proactive interagency coordination and to provide for deterrent-level penalties for IP infringement in physical markets and online. 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. The United States also remains concerned with Indonesia’s law concerning geographical indications.

In addition, Indonesia’s 2016 Patent Law continues to raise concerns, including with respect to the patentability criteria for incremental innovations, local manufacturing and use requirements, the grounds and procedures for issuing compulsory licenses, and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States finalized a bilateral IP work plan in 2018 to improve IP protection and enforcement in Indonesia, and will continue to work with the Indonesian government to address deficiencies in IP protection and enforcement and to promote public education and outreach.

SERVICES BARRIERS

Audiovisual Services

Indonesia’s 2009 Film Law imposes a 60 percent local content requirement for local exhibitors (movie theaters and TV stations), prohibits local exhibitors from dedicating more than 50 percent of their total screen time to content from a single film production business, film distribution business, or film import business over a period of six consecutive months, prohibits the dubbing of foreign films, and prohibits foreign companies from distributing or exhibiting films. In September 2019, the Minister of Education and Culture issued Regulation 34/2019, which if enforced, would implement the aforementioned provisions of the Film Law.

Distribution Services

Logistics services generally are subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

Express Delivery

Indonesia maintains restrictions on the provision of postal services, broadly defined to include courier, express delivery, and other logistics services. Indonesian law requires that postal service suppliers be majority-owned by Indonesians and that foreign suppliers limit their activities to provincial capitals with international airports and seaports.

Financial Services

Generally, no single investor, foreign or domestic, may own more than 40 percent of an Indonesian bank. In certain cases, the Indonesian Financial Services Authority (OJK) may grant exceptions to this general rule. In addition, since 2015, a foreign investor may hold a majority stake in an Indonesian bank if the investor has obtained that ownership stake by acquiring and merging two small banks, defined as banks with capital of less than IDR 1 trillion (approximately \$73 million) prior to the merger.

Since 2013, Indonesia's central bank, Bank Indonesia (BI) has restricted foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

Under BI Regulation 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent, but exempts existing investments that exceed this foreign equity limitation. OJK Regulation 77/2016 on peer-to-peer (P2P) lending companies introduces various guidelines, obligations, and restrictions for P2P lending services, and the organization of P2P lending service providers. This regulation caps foreign ownership of P2P services at 85 percent and mandates data localization. Nonbank financial service suppliers may do business in Indonesia as a joint venture or be partially owned by foreign investors, but cannot operate in Indonesia as a branch of a foreign entity.

BI Regulation 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to eventually be processed through NPG switching institutions located in Indonesia and licensed by BI, starting with domestic retail debit transactions in 2018. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, preventing wholly foreign-owned companies from supplying switching services, and prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit transactions. BI Regulation 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer. The United States continues to raise concerns with respect to these policies.

Health Services

Indonesia's 2016 Negative Investment List caps foreign ownership in general hospitals, private specialist clinics, dental clinics, and specialized nursing services at 67 percent in all regions of Indonesia, except Manado and Makassar where foreign ownership is prohibited for these healthcare facilities. Foreign ownership is also prohibited for private maternity hospitals, general medical clinics, residential healthcare, and basic health services facilities.

Insurance Services

The 2014 Insurance Law requires all insurance companies to incorporate locally and limits foreign investment in domestic insurance companies to the acquisition of publicly traded shares. Private equity purchases of company stock are not allowed, though the Insurance Law exempts joint ventures predating the law where foreign ownership was acquired through private equity means. The Insurance Law does not contain an explicit limitation on foreign equity ownership, but called for the MOF to issue such a regulation. In May 2018, Indonesia issued Government Regulation 14/2018 (GR 14) limiting foreign equity in insurance companies at 80 percent. GR 14 exempts companies with foreign ownership higher than 80 percent at the time of the GR 14's issuance, but limits these companies' foreign ownership to their May 2018 levels and requires new capital injections to comply with the 80 percent foreign/20 percent domestic ownership rule. In January 2020, Indonesia issued Government Regulation 3/2020, which amends GR 14 and allows exempted companies to inject new capital at their current equity ratios (*i.e.*, above the 80 percent limit).

OJK Regulation 14/2015 and OJK Circular Letter 31/2015 require insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for certain products (such as vehicle, accident, health, and life insurance). OJK also requires mandatory domestic cessions of up to 50 percent for other insurance lines, such as certain property and casualty policies. The United States has raised concerns over mandatory cession requirements for reinsurance and will continue to engage with Indonesia on this matter.

MOT Regulation 82/2017 requires exporters of coal and crude palm oil, importers of rice, and importers of items for government procurement to use Indonesian national shipping and insurance companies. Certain exporters and importers are granted a limited exception in the event that there is limited availability of Indonesian owned maritime transport or insurance companies. In 2018, MOT issued Regulation 80/2018 postponing implementation of the domestic shipping requirement until May 1, 2020. Indonesia began implementation of the national insurance requirement in June 2019.

Professional Services

Legal Services

Only Indonesian citizens may be licensed as lawyers in Indonesia. Foreign lawyers may work in Indonesia as legal consultants with the approval of the Ministry of Law and Human Rights. A foreign law firm seeking to enter the market must establish a partnership with a local firm.

Audit and Accounting Services

A foreign public accounting firm must be affiliated with a local public accounting firm to conduct business in Indonesia. A foreign accounting firm must use the name of its local affiliate in addition to the foreign firm's name in presentations and disclosures. Indonesia allows a maximum of 10 percent foreign national staff for each level of management in the affiliated local accounting firm. In affiliated accounting firms, the ratio of foreign audit signing partners to local signing partners cannot exceed one to four.

Transport

Law 17/2008 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.

Construction, Architecture, and Engineering

Government Regulation 10/2014 permits a local construction firm to serve as subcontractor or advisor to a foreign construction firm, subject to several conditions, such as: (1) the Indonesian government determines that a local firm is not capable of managing an entire project on its own; (2) the foreign firm works with a 100 percent locally owned firm or in a joint venture with at least 65 percent local ownership; (3) the construction project is worth at least IDR 100 billion (\$7.5 million) (or a minimum of IDR 20 billion, approximately \$1.5 million, for a consultation project); (4) the project is considered "high-tech," such as by incorporating new technology that the local market cannot provide; and (5) the risk of project failure is high.

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.

In June 2019, the Minister of Public Works and Public Housing (MPWPH) issued Regulation 9/2019, which requires foreign engineering firms to have a local joint venture partner. Under Regulation 9/2019, foreign-owned companies may be required to sell up to one-third of their operations to local companies in the same engineering specialty to remain in the market. In November, MPWPH issued Regulation 17/2019, revoking Regulation 9/2019 and its local joint venture requirement.

Education

Indonesia limits foreign investment in primary, secondary, and tertiary educational institutions through issuance of special licenses. Foreign investment in non-formal education is limited to 49 percent. A foreign national may provide educational services at the tertiary level only if authorized by the Ministry of Education and Culture and the Ministry of Manpower. Authorization is granted on a case-by-case basis and only when no Indonesian instructors are capable of filling the position.

Franchising and Retail Distribution

In September 2019, the Minister of Trade issued Regulation 71/2019, which amends long-standing local content requirements in the franchising sector. On its face, Regulation 71/2019 appears to eliminate a 2012 requirement that 80 percent of products sold by retail companies be of Indonesian origin. Regulation 71/2019, however, still requires retail companies to "prioritize" the use of domestic goods and services unless domestic products do not meet a franchisor's "quality standards." Regulation 71/2019 also appears to eliminate a 2012 cap on the number of outlets a franchisor can directly own in Indonesia. Despite the removal of these restrictions from Regulation 71/2019, local content requirements and restrictions on the number of outlets appear to remain in force through other regulations. MOT Regulation 47/2016 continues to require 80 percent of retail merchandise to be local products, and Presidential Regulation 112/2007 continues to impose limitations on the number of outlets a franchisee may own.

Additionally, under MOT Regulation 70/2013, domestic products must account for at least 80 percent of the total amount and types of goods sold by "modern" retail establishments. Also under that regulation, private label products may account for a maximum of 15 percent of a modern retail establishment's inventory. In 2014, MOT issued Regulation 56/2014 providing an exception to the domestic product

requirement for standalone brands or specialty stores selling products that meet any one the following criteria: (1) products requiring uniformity of production and sourcing from a global supply chain; (2) products with “world famous” or premium branding that are not yet produced in Indonesia; or (3) products from certain countries sold to meet the needs of their citizens living in Indonesia. Regulation 56/2014 provides an exception to the 15 percent maximum private label products cap to stores that have a local partner, and exempts modern stores with more than 150 outlets from the local partner requirement.

Telecommunications Services

Indonesia has issued a number of measures that make it more difficult to import cellular and Wi-Fi equipped products. Under MOT Regulation 82/2012, last amended by MOT Regulation 41/2016, importers of cell phones, handheld computers, and tablets are not permitted to sell directly to retailers or consumers. Additionally, importers are required to become a “registered importer” and must confirm that they are working with at least three distributors and provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms in order to qualify for an MOT import license.

U.S. companies have reported that, in some cases, MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation 108/2012) to protect locally manufactured cell phones, handheld computers, and tablets. Companies seeking to import 4G-LTE enabled devices may only do so under a “producers license” (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, threatening to limit the ability of foreign producers to sell these devices in Indonesia. (*For further information on API-P requirements, see the Import Licensing Requirements section.*) MOT Regulation 41/2016 also requires companies applying for an import license to submit product identification numbers and a certificate from the Ministry of Communications and Information Technology (MCIT).

Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation 68/2016, which requires importers to obtain an MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of “specialized items.” Taken together, Indonesia’s licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

In October 2019, MCIT issued Regulation 11/2019 meant to curb illegal importation of cell phones, laptops, and tablets by creating an International Mobile Equipment Identity (IMEI) database that will only allow devices that have an IMEI number registered in the database to work in Indonesia, effective April 2020. MOT and MOI are reportedly finalizing regulations that will complement MCTI Regulation 11/2019. Draft MOT regulations indicate that importers will be required to register their devices’ IMEI numbers with MOI.

Local Content Requirements

MCIT Regulation 27/2015 requires all 4G-LTE enabled devices to contain 30 percent local content and all 4G-LTE base stations to contain 40 percent local content by January 2017. MOI Regulation 29/2017 provides a formula for counting “local content” and includes local manufacturing, development, software applications, and investment commitments as means to satisfy the requirement. Companies may satisfy the local content requirement by committing to build an “innovation center,” invest at certain levels, and develop Indonesia’s IT and communication industries. MOI Regulation 29/2017 also sets out a detailed monitoring system with multiple annual assessments. MCIT Circular Letter 518/2017 clarifies that MCIT

Regulation 27/2015 applies only to products under the Harmonized System (HS) codes for base stations, cell phones, tablets, laptops, and Wi-Fi modems.

MCIT Regulations 7/2009 and 19/2011 require that equipment used in certain wireless broadband services contain local content of at least 30 percent for subscriber stations and 40 percent for base stations and that all wireless equipment contains 50 percent local content. Indonesian telecommunication operators are also required, pursuant to MCIT Regulation 41/2009, to expend a minimum of 50 percent of their total capital expenditures for network development on locally sourced components or services. MCIT Regulation 4/2019 requires all TV and set-top boxes based on digital video broadcasting-terrestrial second generation (DVB-T2) and internet protocol set-top boxes to contain at least 20 percent local content.

The United States continues to press Indonesia to remove these local content and investment requirements, which undermine opportunities for more rapid development of the Indonesian telecommunications sector.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Signed in October 2019, Government Regulation 71/2019 (GR71) on the Implementation of Electronic Systems and Transactions replaces Indonesia's long-standing data localization measure, Government Regulation 82/2012. Under GR71, private sector electronic system operators (defined as persons, business entities, or communities that operate an electronic system) are permitted to transfer, process, and store data outside of Indonesia. GR71, however, maintains data localization requirements for public sector electronic system operators (defined as state institutions or other institutions appointed by a state institution that operate an electronic system), requiring such operators to process and store data in Indonesia.

GR71 also contains a provision that allows financial service regulators to "further regulate" the treatment of financial data by both private and public sector electronic operators. Stakeholders have expressed concern that financial sector regulators, such as the OJK and BI, may impose additional localization requirements under this provision. Indeed, OJK and BI currently maintain regulations that require insurers and reinsurers (under OJK Regulation 69/2016), commercial banks (under OJK Regulation 38/2016 and BI Regulation 9/2007), P2P lenders (under OJK Regulation 77/2016), and "digital finance innovators" (under OJK Regulation 13/2018) operating in Indonesia to establish data centers and disaster recovery centers in Indonesia. Indonesia has indicated that OJK and BI will amend these requirements to comply with GR71, and to allow for the offshore processing, transfer, and storage of financial data by private sector electronic system operators.

GR71 also requires public and private sector electronic system operators to register their electronic systems with MCIT, though it is unclear if this registration requirement applies to offshore electronic system operators. GR71 states that there will be a subsequent MCIT regulation detailing registration provisions. Additionally, GR71 requires private sector electronic system operators to facilitate "supervision" by government agencies, including by granting access to electronic systems and data for monitoring and law enforcement purposes (which will also be subject to further implementing regulations).

The United States will seek further clarification of GR71's provisions. The United States will also continue to stress that data localization requirements for financial data are not necessary as long as financial regulators have access to such data for supervision and other regulatory purposes, nor are such requirements needed to secure private information. To the contrary, they can undermine the security and integrity of data by requiring redundant storage and increasing the number of network nodes.

Internet Services

In 2017, Indonesia proposed two new packages of regulations with the potential to hinder foreign providers of Internet services from participating in the Indonesian market. Presidential Regulation 74/2017 formalized the E-Commerce Roadmap, which calls for 31 regulatory provisions that will affect financing, taxation, consumer protection, education and human resources, logistics, communication infrastructure, and cyber security for electronic commerce companies. MOT and the Coordinating Ministry for Economic Affairs have proposed a regulation pursuant to the roadmap that would contain several restrictive measures. A draft of this regulation would require many online merchants, platforms, and “intermediaries,” such as Internet service providers, social media sites, and search engines, conducting business in Indonesia to register with the Indonesian government, set up or appoint a local representative office, and give priority to Indonesian goods and services. The draft regulation would also impose new privacy restrictions, including a ban on transfers of customer data to countries deemed by the Minister of Trade not to have a level of data protection “equivalent” to that of Indonesia.

MCIT continues to consider new regulations on online “digital platform services” (or “over-the-top” internet services). While the most recent proposed regulation removes some troubling provisions seen in prior versions, the draft rules would require many online service providers to establish or appoint local representatives and to register with MCIT. Stakeholders remain concerned that the scope and effect of this proposed regulation is too broad and could destabilize the fundamental architecture of Internet-delivered services. The United States has requested that Indonesia delay this regulation until these issues can be addressed.

Digital Products

In 2018, the MOF issued Regulation 17/PMK.010/2018, which establishes five 8-digit tariff HS lines (import duty rates currently set at zero percent) for software and other digital products transmitted electronically, including applications, software, video, and audio. Companies have expressed concern over the potential administrative burden of this new regulation, including potential customs documentation or reporting requirements, but MOF has indicated that any data reporting under this system will be voluntary. Imposition of any duties on digital products would raise serious concerns regarding Indonesia’s longstanding WTO commitment, renewed on a multilateral basis in December 2019, not to impose duties on electronic transmissions. In addition, using a tariff schedule for the application of such duties on non-physical products raises fundamental questions and challenges related to the harmonized tariff system, the role of customs authorities in the digital space, and the determination of country of origin for electronic transmissions.

INVESTMENT BARRIERS

Decentralized decision-making processes, legal uncertainties, rigid labor markets, inadequate infrastructure, and powerful domestic vested interests all contribute to Indonesia’s complex and difficult investment climate. These include Indonesian government requirements that often compel foreign companies to do business with local partners and to purchase goods and services locally. Moreover, a large number of U.S. firms continue to express concern about the Indonesian legal system, especially with regard 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 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 investments made before May 18, 2016, although questions remain as to how it will apply in practice.

Energy and Mining

Over the past decade, 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.

In the oil and gas sector, Government Regulation 79/2010 allows the Indonesian government to change the terms of certain existing production-sharing contracts, eliminate the tax deductibility of certain expenses, change the terms and criteria for cost recovery, and place limits on allowable costs for goods, services, and salaries. Government Regulation 27/2017 revises Regulation 79/2010 to provide more incentives for upstream oil and gas investment, although the effectiveness of this regulation will depend on subsequent implementing regulations from the MOF and Ministry of Energy and Mineral Resources (MEMR). Furthermore, Presidential Regulation 35/2004, which regulates contractor activities in the upstream oil and gas sector, requires contractors to “prioritize” the use of domestic services, including energy-related services, as well as domestic technologies and engineering and design capabilities.

Foreign companies have noted that these local preference policies severely undermine their ability to operate in the Indonesian market. Indonesia’s oil and gas regulator, SKK Migas, also has tightened the rules relating to how local content is measured with respect to oil and gas projects. Once fully implemented, the new criteria are intended to achieve an average of 91 percent local content by 2025, up from 61 percent in 2012. Moreover, under the rules, goods and services supplied by companies without majority Indonesian shareholding can no longer qualify as local content. As a result, foreign energy service companies are at a disadvantage compared to majority Indonesian-owned companies, which can more easily meet local content requirements. In addition, MEMR Regulation 31/2013 limits the amount of time expatriates may work in Indonesia’s oil and gas sector to four years, and prohibits expatriates from working past the age of 55.

In the mining sector, Indonesia’s 2009 Mining Law created a system for granting mining concessions based on licenses, although some companies still operate on previously existing contracts of work. The law and its implementing regulations impose onerous requirements on companies doing business in the mining sector, including local content requirements, domestic sale requirements, and a requirement to process raw materials in Indonesia prior to export. Because the mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than the contract of work system. Moreover, foreign companies that obtain mining licenses must divest 51 percent of their holdings to Indonesian ownership over a ten-year period. The Indonesian government is given the right to buy shares first, followed by Indonesian regional governments, SOEs, and private Indonesian companies, in that order.

In the power generation sector, MOI Regulation 54/2012 imposes varying levels of local content requirements with respect to goods and services used in power plants, including steam, hydroelectric, geothermal, gas, solar, and in the transmission and distribution network. The local content requirements for solar power plants were tightened as a result of MOI Regulations 4/2017 and 5/2017, which require 60 percent local content in solar modules and 100 percent in services by 2019. MEMR Regulation 19/2016 further mandates that the Indonesian state-owned transmission and distribution company, PLN, prioritize the use of domestic goods and services and meet a minimum standard of local content for solar (photovoltaic) power plant development, in accordance with existing MOI regulations.

As part of the government's effort to stabilize the Rupiah, Government Regulation 1/2019 mandates companies engaging in natural resources exports to place their foreign exchange proceeds from these export transactions in a designated account in a bank located in Indonesia and restricts the use of these proceeds to five categories: (1) export duty and other levies within the export sector; (2) loans; (3) imports; (4) profits or dividends; and (5) other purposes as regulated under Article 8 of Law No. 25/2007 on Investment. This includes proceeds from exports of mining, plantation, forestry, and fisheries.

Medical Devices and Pharmaceuticals

The 2016 Negative Investment List raised the foreign investment cap for the manufacturing of raw materials for medicines from 85 percent to 100 percent in an apparent effort to redress shortages of raw materials, which are almost exclusively imported. However, foreign investment in the finished drugs industry is still capped at 85 percent. Foreign investment in the manufacture and distribution of medical devices is capped at 33 percent and 49 percent, respectively.

Medical devices sold by multinational companies in Indonesia face unclear or challenging market conditions on a number of fronts. These include uncertain progress on whether Indonesia will implement the ASEAN Medical Device Directive by the proposed 2020 implementation date; lack of a separate legal medical device definition so that pharmaceutical requirements (such as local manufacturing restrictions mentioned in the *Pharmaceutical Market Access* section) could potentially also apply to medical devices; and challenges in obtaining product approvals for the electronic catalog system used for public procurements. In addition, Indonesia's public procurement agency, LKPP, implemented price controls on coronary stents in 2017, which follows India's lead for slashing prices for these products and exclusively targets major multinational medical device companies with significant U.S. operations. The United States has and will continue to engage with Indonesia on these price controls and encourage the government not to extend this policy to other medical device categories.

OTHER BARRIERS

Although the Indonesian government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within the Indonesian government, limited access to financing, the slow pace of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, restrictive labor laws, arbitrary tax assessments, and lack of transparency in the development of laws and regulations. U.S. companies seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

Export Restrictions

Indonesia's 2009 Mining Law requires companies to process ore locally before shipping it abroad. Indonesia has implemented this law through a series of regulations that ban the export of over 200 types of mineral ore, including nickel and bauxite. U.S. stakeholders have expressed serious concern about these measures. Until 2017, companies could export eight concentrates associated with these mineral ores (including copper, lead, and iron) as long as they paid a prohibitive export tax and met other requirements, such as building smelters in Indonesia. In 2017, Indonesia put in place a new set of requirements for the mining industry, as specified in Government Regulation 1/2017. Among other things, this regulation requires companies with existing contracts of work to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of ten years and build a domestic smelter by January 2022. These licenses would allow companies to export mineral concentrates.

In 2014, as part of implementation of the 2009 Mining Law, Indonesia prohibited the export of nickel ore, one of several recent measures restricting the export of key steelmaking raw materials. Indonesia relaxed the nickel export ban in 2017, intending for the full ban to be reinstated in January 2022. However, following an announcement in August 2019, Indonesia reinstated the ban as of January 1, 2020. The United States has expressed concern about the impact this measure will have on global nickel supply and prices. On December 11, 2019, the United States requested to join consultations initiated by the EU concerning the consistency of Indonesia's export ban with Indonesia's WTO obligations.

In the oil and gas sector, MEMR Regulation 42/2018 requires all oil and gas contractors to sell their production to state-owned Pertamina in an attempt to reduce Pertamina's crude oil imports. The move comes on top of production-sharing contracts in Indonesia (and the gross split contracts that are replacing them), which contain a standard clause specifying that 25 percent of all production must be sold to domestic refineries for domestic consumption. The policy, known as the Domestic Market Obligation, also requires companies to sell the crude oil to domestic refineries at a heavily discounted rate. BI Regulation 13/2011 (as amended by BI Regulation 14/2012) subjects export earnings to Indonesian banking law and regulations, despite production-sharing contracts that allow companies to remit such earnings abroad.

On exports of cocoa and palm oil, Indonesia imposes a progressive export tax. These cocoa and palm oil export taxes are calculated based on a monthly average of export prices. Although these taxes do not apply below a certain price threshold, there remains a standing levy of \$50 per metric ton for crude palm oil and \$30 per metric ton for processed palm oil.

Indonesia also effectively bans the export of steel scrap and bans exports of raw and semi-processed rattan. The Indonesian government is considering imposing export taxes on other products, including coconut, base metals, and coal.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was \$5.1 billion in 2019, a 36.4 percent decrease (\$2.9 billion) over 2018. U.S. goods exports to Israel were \$14.4 billion, up 4.9 percent (\$670 million) from the previous year. Corresponding U.S. imports from Israel were \$19.5 billion, down 10.4 percent. Israel was the United States' 23rd largest goods export market in 2019.

U.S. exports of services to Israel were an estimated \$6.1 billion in 2018 (latest data available) and U.S. imports were \$8.1 billion. Sales of services in Israel by majority U.S.-owned affiliates were \$4.5 billion in 2017 (latest data available), while sales of services in the United States by majority Israel-owned firms were \$2.9 billion.

U.S. foreign direct investment (FDI) in Israel (stock) was \$27.1 billion in 2018, a 1.8 percent increase from 2017. U.S. direct investment in Israel is led by manufacturing, professional, scientific, and technical services, and information services.

TRADE AGREEMENTS

The United States-Israel Free Trade Agreement

When the two parties signed the United States-Israel Free Trade Agreement (FTA) in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. While the United States and Israel have eliminated tariffs on non-agricultural goods as agreed, tariff and nontariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The two parties completed negotiation and implementation of a successor ATAP in 2004. Originally scheduled to last through December 31, 2008, the 2004 ATAP granted improved access for select U.S. agricultural products. The second ATAP has been extended 12 times, most recently through December 31, 2020, 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 (MFN) rates.

IMPORT POLICIES

Tariffs

Agriculture

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, juice, and some processed foods. According to industry estimates, the

elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of \$30 million to \$55 million per year. U.S. producers of apples, pears, cherries, frozen vegetables, and stone fruits estimate that the elimination of Israeli trade barriers would lead to an increase of up to \$15 million per year in export sales of these products. Stakeholders estimate that full free trade in agriculture could also result in significant increases in U.S. cheese exports to Israel. Similarly, stakeholders estimate that removing tariffs on food product inputs used by U.S.-based restaurant chains operating in Israel could save these chains millions of dollars annually and lead to their expansion in Israel.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Israel notified its customs valuation legislation to the WTO in April 1998, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE

Israeli regulatory bodies, including the Ministry of Economy (Standards Institute of Israel), Ministry of Health (Food Control Services), and the Ministry of Agriculture (Veterinary Services and the Plant Protection Service), often adopt standards developed by Israeli regulators or European standards organizations rather than international standards. This results in the exclusion of some U.S. products from the Israeli market and adds costs to certain U.S. exports to Israel.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or (4) purchasing from Israeli industry.

Israel is a 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 start phasing out offsets in 2020 and to eliminate offsets entirely after 15 years from the entry into force of the revised GPA in Israel.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to make purchases in Israel in compliance with the IC agreements, and, as a result, their participation in Israeli tenders is limited.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements funded by Israel. Tenders open to U.S. suppliers require the company to have a local agent and/or bank account to be able to transact in New Israeli Shekels (NIS).

A new \$38 billion security assistance MOU signed by the United States and Israel began in fiscal year 2019. The MOU will be in place for ten years, through fiscal year 2028.

INTELLECTUAL PROPERTY PROTECTION

Israel has made positive efforts in some areas to strengthen intellectual property (IP) rights protection in recent years. Steps included passage by Israel's Knesset of amendments to the country's copyright enforcement law in late 2018. Despite these efforts, the United States remains concerned with certain deficiencies that remain with respect to Israel's protection of IP. On copyright protection, while Israel is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not ratified either. Israel lacks adequate protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for biologic pharmaceuticals. Israel also lacks patent term restoration to compensate for marketing approval delays for pharmaceuticals.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was \$69.0 billion in 2019, a 2.7 percent increase (\$1.8 billion) over 2018. U.S. goods exports to Japan were \$74.7 billion, down 0.8 percent (\$576 million) from the previous year. Corresponding U.S. imports from Japan were \$143.6 billion, up 0.9 percent. Japan was the United States' 4th largest goods export market in 2019.

U.S. exports of services to Japan were an estimated \$48.7 billion in 2019 and U.S. imports were \$36.0 billion. Sales of services in Japan by majority U.S.-owned affiliates were \$74.6 billion in 2017 (latest data available), while sales of services in the United States by majority Japan-owned firms were \$165.1 billion.

U.S. foreign direct investment (FDI) in Japan (stock) was \$125.5 billion in 2018, a 2.8 percent decrease from 2017. U.S. direct investment in Japan is led by finance and insurance, manufacturing, and information services.

OVERVIEW

In October 2019, the United States and Japan signed two new trade agreements: the United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement. Under the USJTA, over 90 percent of U.S. agricultural exports to Japan are duty free or receive preferential tariff access. The U.S.–Japan Digital Trade Agreement includes high-standard provisions that, among other provisions, prohibit the application of customs duties or other discriminatory measures to digital products, ensure the unimpeded cross-border transfer of information, prohibit the mandatory use of local computing facilities, and provide limitations on civil, non-intellectual property rights liability for Internet platforms with respect to third-party content. The United States continues to engage closely with the Japanese government to urge removal of a broad range of barriers to U.S. exports, including barriers at the border as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market. As agreed by our Leaders, the two countries intend to enter into further negotiations on customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues.

IMPORT POLICIES

Tariffs

Japan's average Most Favored Nation (MFN) applied tariff rate was 4.4 percent in 2018 (latest data available). Japan's average MFN applied tariff rate was 19.3 percent for agricultural products and 2.5 percent for non-agricultural products in 2018 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 4.7 percent.

While Japan's average MFN applied tariffs are relatively low for non-agricultural products, certain high tariffs have a negative impact on a range of U.S. industrial goods exports to Japan, such as chemicals, fish, wood products, and jewelry.

Japan is the fourth largest single-country market for U.S. agricultural products, with U.S. exports valued at nearly \$12 billion in 2019, despite the existence of tariff and substantial non-tariff market access barriers.

USJTA Outcomes

Under the USJTA, Japan is eliminating or lowering tariffs for a wide array of U.S. agricultural goods exports. For other agricultural goods, Japan has provided preferential U.S.-specific quotas. More specifically, the USJTA provides for the following:

Tariff Reduction: For some agricultural products valued at \$2.9 billion in 2018, Japan will reduce tariffs in stages. The first tariff cut took place on January 1, 2020. Among the products benefitting from this enhanced access are fresh beef, frozen beef, fresh pork, and frozen pork.

Tariff Elimination: Tariffs were eliminated on January 1, 2020, on over \$1.3 billion of U.S. farm products, including almonds, blueberries, cranberries, walnuts, sweet corn, grain sorghum, food supplements, broccoli, and prunes. Other products, with U.S. exports to Japan valued at \$3.0 billion, benefit from staged tariff elimination. This group of products includes wine, cheese and whey, ethanol, frozen poultry, processed pork, fresh cherries, beef offal, frozen potatoes, oranges, egg products, and tomato paste.

Country-Specific Quotas: For some products, preferential market access is provided through the creation of country-specific quotas (CSQs), which provide access for a specified quantity of imports from the United States at a preferential tariff rate, generally zero. CSQs cover imports of U.S. wheat, wheat products, malt, processed cheese, glucose and fructose, corn and potato starch, and inulin.

Mark-Up: U.S. exports to Japan of wheat and barley benefit from a reduction to Japan's "mark-up" on those products. U.S. exports to Japan's of wheat and barley were valued at more than \$600 million in 2019. *(For further information, see the Nontariff Barriers Section on Japan's Wheat Import System below.)*

Safeguards: The USJTA will exempt U.S. pork and beef from Japan's WTO safeguard mechanisms and provides for new transitional safeguard measures for beef, pork, processed pork, whey, oranges, and race horses.

The USJTA does not cover all agricultural products, and Japan's MFN tariffs continue to apply to the products that are not covered. Products not receiving preferential treatment under the USJTA include rice, raisins, table grapes, fresh grapefruit, fresh strawberries, lettuce, and certain processed foods.

Fish and Seafood

Total U.S. fish and seafood exports to Japan in 2019 were valued at \$674 million. However, tariffs of 3.5 percent to 10 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, remain an impediment to U.S. exports, as well as for Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan's import quotas on Alaska pollock, cod, Pacific whiting, mackerel, sardines, squid, Pacific herring, pollock roe, cod roe, and surimi. Although Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the import quotas continue to present barriers to U.S. exports. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

Leather and Footwear

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 189 percent. In particular, Japan continues to apply tariff-rate quotas (TRQs) to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or 4,300 yen per pair (approximately \$39), whichever is higher. These tariffs

can double the cost of imports and negatively affect market access for U.S.-made and U.S.-branded footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Nontariff Barriers

Rice Import System

Japan's highly regulated and nontransparent importation and distribution system for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a global TRQ of 682,200 metric tons (MT) (milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Only a small amount of U.S. rice imported into Japan reaches Japanese consumers identified as U.S. rice. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. The MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing, animal feed, and re-export as food aid.

U.S. rice exports to Japan in 2019 were valued at \$275 million, totaling 338,240 MT. Although U.S. rice exports make up only about four percent of all rice consumed in Japan, industry research shows that Japanese consumers might buy more high-quality U.S. rice if it were more readily available. The United States continues to monitor Japan's rice import system in light of Japan's WTO import commitments.

Wheat Import System

Japan requires wheat to be imported through the Grain Trade and Operations Division of MAFF's Crop Production Bureau to secure the lowest tariff rate. The Crop Production Bureau resells the wheat to Japanese flour millers at prices substantially above import prices by imposing a "mark-up". These high prices limit wheat consumption by increasing the cost of wheat-based foods in Japan. The United States continues to monitor carefully the operation of Japan's state-trading entity for wheat and its potential to distort trade.

Pork Import Regime

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions in a manner similar to a variable levy. In order to prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to 482 yen per kg (approximately \$4.30 per 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. With the implementation of the USJTA, the pork gate price mechanism will be reduced but not eliminated.

Customs Barriers and Trade Facilitation

The United States has encouraged Japan to raise its *de minimis* threshold below which it will not assess duties from 10,000 yen (approximately \$90) to a level closer to the U.S. *de minimis* threshold. This would reduce documentation requirements and help U.S. shipments move more quickly across the border. Expanding Japan's advance rulings system to address more customs issues would also improve transparency and predictability for U.S. exporters. The United States also has certain concerns about unequal customs treatment between Japan Post and private companies. The United States continues to urge

Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. (*For further information, see the Services Barriers section below.*)

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements

The Japanese Consumer Affairs Agency (CAA) amended Japan's Food Labeling Standards in 2017. This amendment expands country of origin labeling (COOL) requirements to the main ingredients by weight in processed foods manufactured in Japan, with a transition period for compliance with the new requirements until March 2022. For example, a Japanese manufacturer of soy sauce would have to identify on the label the country where the soybeans used in its production were cultivated. While the expanded requirements do not apply to imported processed foods manufactured outside of Japan, they have the potential to adversely affect U.S. exports of food ingredients because processed food manufactured in Japan may be produced with imported ingredients. In such cases, Japanese manufacturers may avoid using ingredients from multiple origins (including the United States) to minimize labeling burdens. Furthermore, the amendment allows for the possibility of incorrect food labeling because Japanese processed food manufacturers may indicate an "intended" or historical source of ingredients when an ingredient is not actually sourced from that country.

Sanitary and Phytosanitary Barriers

Food Safety

Food Additives

Japan's regulation of food additives has restricted imports of several U.S. food products, especially processed foods and alcoholic beverages. U.S. exports of processed foods, including alcoholic beverages, to Japan were valued at \$2.8 billion in 2019. Certain additives that are widely used in the United States and other markets are not permitted in Japan, including carmine, a natural red food coloring used in a variety of goods, such as baked, confectionary, ice cream, and yogurt products. In addition, U.S. manufacturers have raised concerns about the length of Japan's approval process for food processing aids – substances used in food processing that are no longer present, or present at very low levels, in the final food product. The Japanese government created the Food Additive Designation Consultation Center (FADCC) in 2014 to assist applicants in preparation of applications for regulatory approval of food additives. However, the FADCC's services have not been shown to reduce the time needed to prepare these applications.

Pre- and Post-Harvest Fungicides

Japan classifies fungicides applied pre-harvest as pesticides and classifies fungicides applied post-harvest as food additives. Japan's requirement that post-harvest fungicides be classified as food additives does not have a significant impact on domestic producers, as Japanese farmers do not generally apply fungicides after harvest.

Japan previously required separate review processes for the pre-harvest and post-harvest uses of each fungicide. In 2018, Japan registered the first fungicide through a single review process that is intended to reduce the time and cost involved in securing approval for pre- and post-harvest uses. The United States remains concerned that Japan requires products treated with a post-harvest fungicide to be labeled at the point of sale with a statement indicating a list of the chemicals used, which may put U.S. products at a

disadvantage relative to Japanese products by dampening demand for U.S. products. The United States continues to work with Japan on these issues.

Maximum Residue Limits

Japan has historically maintained burdensome application requirements for pesticide maximum residue level (MRL) approvals. Japan has made significant progress in establishing science-based MRLs. The establishment of numerous permanent MRLs has resulted in fewer disruptions in trade. However, the lengthy review process for registration of new pesticides and establishment of MRLs can still delay the ability of U.S. growers to use newer and safer crop-protection products on crops to be shipped to Japan.

Japan's procedures for enforcement of MRLs result in uncertainty for shippers, including those who have never violated Japan's standards. After a single pesticide MRL violation, Japan imposes enhanced surveillance of all imports of the product on which the MRL violation was detected from that particular exporting country. If a second violation is found during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance. The United States continues to work with Japan and U.S. producers to support Japan's MRL establishment process and to address MRL-related concerns.

Plant Health

In September 2019, the United States and Japan agreed on a phytosanitary framework that addresses many market access requests for the agriculture industry in each country. Based on that framework, in 2020 the U.S. agriculture industry will have expanded access to Japan for exports of potatoes, apples, and stone fruit.

Potatoes - Year Round Access for Chipping Potatoes

The United States exports chipping potatoes to Japan from 16 states. Japan previously permitted imports of U.S. chipping potatoes only during a six-month window. Japan completed regulatory revisions in February 2020 to allow year-round access. The United States and Japan will continue technical work with the expectation of addressing Japan's restrictions on overland transportation of U.S. chipping potatoes.

Apples – Transfer of Treatment Oversight

Japan transferred oversight of the program for U.S. apple exports to Japan to USDA. This reduces costs for the U.S. apple industry and provides more flexibility to schedule exports. In addition, Japan is reviewing the U.S. request to export apples under a systems approach. Such an approach would eliminate fumigation treatment requirements.

Stone Fruit – Inclusion of Japanese Plums

Japan allows imports of nectarines and European plums from California if they have undergone a phytosanitary treatment (fumigation). Through technical negotiations, Japan and the United States have agreed to include several species of Japanese plums in a revised operational work plan regarding phytosanitary requirements. Once agreement is reached on the work plan, Japan will complete regulation revisions that will result in access for Japanese plums from California as well. The United States and Japan will also continue other technical work with the expectation that other stone fruit issues will be addressed, including access for U.S. peaches.

SUBSIDIES

Wood Products and Building Materials

Total 2019 exports of U.S. forest products to Japan were valued at \$660 million. Japan maintains numerous subsidy programs at the national, prefectural, and municipal levels that may favor domestic wood products over imports. The Competitiveness Enhancement Program for Plywood, Sawn Wood and Laminated Timber was continued in the 2018 MAFF supplemental budget, making approximately \$392 million available to support up to 50 percent of the expense of building projects to enhance forestry production and logistics systems. The program also subsidizes Japan Agricultural Standard (JAS) structural lumber, which appears to provide *de facto* support for domestic production. The United States is monitoring the disbursement of these funds and other subsidy programs.

GOVERNMENT PROCUREMENT

Japan is a Party 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 parties. Japan has also made commitments to the United States under bilateral agreements. U.S. industry has previously flagged concerns with Japan's use of technical specifications. Specifically, U.S. industry in several sectors has argued that technical specifications were used to exclude U.S. products and services. The United States has raised these concerns with Japan and will continue to engage with Japan to ensure all procurements covered under these agreements are conducted consistent with Japan's procurement obligations.

INTELLECTUAL PROPERTY PROTECTION

Japan generally provides strong intellectual property (IP) protection and enforcement.

While Japan generally prohibits the importation of IP-infringing goods, Japan's Trademark Act does not prohibit the importation of counterfeit goods by individuals who claim the items are for personal use. Current rules do not restrict the quantity of items imported for personal use, nor the number of times an individual may apply the personal use exemption. This exemption has increasingly been used for items received via postal and courier services. In 2018, Japan customs officials seized 522,129 counterfeit items transported via the postal system, significantly more than the number of seizures made from sea and air cargo shipments. As counterfeit products are increasingly accessible online and transported via postal and courier services, the United States urges Japan to revise the Trademark Act's definitions and personal use exemption to limit the quantity of items and number of times an individual can apply a personal use exemption and disallow the exemption for items received by mail.

A separate but related provision in Japan's Pharmaceutical Affairs Act considers drugs imported by individuals for personal use to be beyond the scope of regulation. As a result, sellers based in Japan are able to ship counterfeit medications from an overseas address directly to consignees as long as the seller claims to be a personal import agent. These personal import agents operate numerous online pharmacies, and Japanese courts have generally ruled that, because agents carry no local inventory, they do not have jurisdiction to prosecute.

The United States has urged Japan to continue to reduce piracy rates, including by adopting methods to protect against piracy in the digital environment. The United States continues to urge Japan to strengthen its laws to provide effective criminal and civil remedies against the unauthorized circumvention of technological protection measures used by rights holders to protect their works, as well as effective criminal and civil remedies against trafficking in tools used to circumvent such technological protection measures.

In order to have products protected with geographical indications (GIs) in Japan under the Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuff (GI Act), domestic as well as foreign products are subject to an application process via MAFF for food and via the National Tax Agency (NTA) for alcoholic beverages. As of February 2020, 88 GIs for agricultural, forestry, and fishery products have been recognized by MAFF. Ten GIs for domestic alcoholic beverages have been recognized by the NTA. In 2018, the Diet passed revisions to the GI Act that would limit the continued use of protected terms by third parties to a period of up to seven years.

Through the Japan–European Union (EU) Economic Partnership Agreement (EPA), which went into effect on February 1, 2019, Japan agreed to protect an additional 210 GIs, including 71 agricultural and fishery products and 139 wines, spirits, and other alcoholic beverages. Through previous EPAs, the National Tax Agency had already protected seven other GIs for alcoholic beverages from Chile, Mexico, and Peru. The EPA agreements on GI designations, essentially a mutual recognition of specified GIs, are a separate process from the MAFF/NTA application process. In total, through the MAFF/NTA process and Japan’s EPA agreements, Japan currently protects 315 GIs.

The United States continues to monitor implementation of Japan’s GI system, as well as implementation of its recent agreement with the EU with respect to GIs. The United States urges Japan to refrain from measures that would unfairly limit market access for U.S. products and to ensure consistency with core transparency and due process principles, in particular with respect to the protection of existing trademarks, the safeguarding of the use of generic terms, and the effective operation of objection and cancellation procedures. The United States continues to work with Japan to improve IP protection and enforcement in specific areas through bilateral consultations and cooperation, as well as in multilateral and regional fora.

SERVICES BARRIERS

Japan Post Holdings and Related Companies

Japan Post Holdings (JP Holdings) is a parent company created to replace the former state-owned enterprise Japan Post. Its subsidiary companies include the new Japan Post (which runs post offices, postal services, and express delivery), Japan Post Insurance (JP Insurance), and Japan Post Bank (JP Bank). In Japan, insurance products, including JP Insurance products, are sold widely in Japan Post offices and JP Bank branches. According to JP Holdings, as of September 2019, approximately 63 percent of JP Holdings’ shares are owned by the Japanese Ministry of Finance. JP Holdings owns approximately 89 percent of JP Bank and 65 percent of JP Insurance.

Express Delivery

In the express delivery service sector, the United States remains concerned by unequal conditions of competition between Japan Post and international express delivery suppliers, including in areas such as quarantine procedures and duty calculation. Private company shipments arriving at airports are required to clear quarantine at the airport, which delays processing and requires expensive, on-site airport facilities. Japan Post packages receive preferential treatment in that they may be taken directly from the airport to be processed at international distribution centers. Further, companies have also reported that Japan customs officials do not consistently apply Japan’s *de minimis* standards to Japan Post Express Mail Service (EMS) shipments, thereby allowing some EMS packages to avoid inspections and duty tax calculations that would otherwise be due.

The United States continues to urge Japan to level the playing field by equalizing customs procedures and requirements and by 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 Japan 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 Japan Post and private sector participants in Japan's express delivery markets.

Insurance Services

Japan's insurance market is the third largest in the world, after those of the United States and China, with a premium volume of \$440.6 billion in 2018 (latest data available). In addition to the offerings of Japanese and foreign private insurers, insurance cooperatives (*kyōsai*) and JP Insurance also provide substantial amounts of insurance to consumers. 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 and Banking

The United States has longstanding concerns about JP Insurance's negative impact on competition in Japan's insurance market and continues to closely monitor the implementation of reforms. The United States has long urged Japan to take steps to address a range of level playing field concerns.

The United States continues to urge Japan not to allow JP Bank and JP Insurance to expand the scope of their operations before a level playing field is established. Restraints on the scope of JP Insurance operations—including the cap on the amount of insurance coverage and limits on the types of financial activities and products JP entities can offer—have helped to limit the extent to which the uneven playing field harms private insurance companies. In 2016, the Japanese government revised a ministerial ordinance to raise the per-customer deposit cap of JP Bank from 10 million yen (approximately \$95,000) to 13 million yen (approximately \$123,300) and to raise the per-policyholder insurance coverage cap of JP Insurance from 13 million yen to 20 million yen (approximately \$190,000). In April 2019, the government raised the per-customer deposit cap to 26 million yen (approximately \$246,700). 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. Concerns related to the condition of JP Insurance's business management re-emerged during 2019 following findings by Japan's Financial Services Agency (FSA) of illegal and deceptive sales of JP Insurance products. This resulted in the FSA and the Ministry of Internal Affairs and Communications (MIC) suspending JP Insurance product sales across the Japan Post network for three months as well as other penalties. In addition, inappropriate communications between the government and JP Holdings, in which the government provided privileged information to the company on the upcoming FSA and MIC penalties, led to senior-level resignations in December 2019.

Insurance Cooperatives

Insurance cooperatives, known locally as “kyōsai”, hold a substantial share of the insurance business in Japan. Some kyōsai are regulated by their respective agencies of jurisdiction (*e.g.*, MAFF or the Ministry of Health, Labor and Welfare (MHLW)) instead of by the FSA, which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford kyōsai critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over kyōsai.

Bank Sales of Insurance

Banks are an important distribution channel for the sale of insurance products in Japan. In 2007, the government fully liberalized the range of insurance products eligible for sale through banks. However, limits remain on the sales of some products, different rules exist for the treatment of customer data in some cases, and sales restrictions on insurance are applied to certain categories of customers (for example, customers who work for small- or medium-sized corporate borrowers). The United States continues to call on the Japanese government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and that takes into account global best practices to further enhance policyholder protection and improve consumer choice.

Professional Services

Legal Services

Japan imposes cumbersome and time-consuming procedures for the registration of foreign lawyers to provide international legal services in Japan and prohibits lawyers from establishing branch offices in Japan (except for one type of firm, which is first required to incorporate in Japan). The United States urges Japan to eliminate the requirement that two years of post-admission practice of home country law take place outside Japan, ensure that legal or bar association rules do not impede Japanese lawyers from becoming members of international legal partnerships, and significantly simplify and accelerate the registration process for new foreign legal consultants.

In October 2018, the Ministry of Justice (MOJ) drafted an amendment to the Foreign Lawyers Act that would address certain concerns. The amendment includes provisions such as: (1) reducing the requirement for post-admission practice of home country law from two years to one year; (2) subsequently permitting foreign lawyers to establish branch offices with Japanese lawyers; and (3) expanding the definition of “international arbitration” in which foreign attorneys are allowed to represent their clients. The Cabinet approved the draft bill in October 2019, and it is expected to pass the Diet in 2020.

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 universities, and allows foreign universities to continue providing their unique contributions to Japan’s educational environment.

U.S. 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 U.S. university has been able to satisfy all the legal requirements to be granted “educational corporation” (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by

Japanese universities. The requirement that such corporations be “independently administered” (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of gakkō hōjin status means foreign satellite universities are also excluded from participation in new Japanese government grant programs that promote international exchange and provide financial support for students wishing to study abroad.

Telecommunications Services

The United States continues to focus on ensuring fair market opportunities for emerging technologies and business models in Japan, ensuring a regulatory framework appropriate for addressing converged and Internet-enabled services, and maintaining competitive safeguards on dominant carriers.

Dominant Carrier Regulation

Former monopoly operator Nippon Telegraph and Telephone Corporation (NTT) remains the largest provider of fixed voice, mobile voice and data, fiber broadband access, IP/packet communications service, sales of telecommunications equipment, and other telecommunications-related services in Japan. On the wireline side, at the end of 2018, NTT, through its regional operating units NTT East and NTT West, controlled 91.3 percent of Japan’s traditional voice and data subscriptions and 43 percent of the Internet-based telephony sector. In terms of fixed broadband, NTT had 20.3 percent of market share by retail subscribers as of September 2019 (second to UQ Communications, at 30.8 percent). In the fiber-to-the-home (FTTH) segment specifically, however, NTT continues to be the dominant player, with approximately 21 million fiber broadband subscribers and a combined segment share of 66.5 percent (down from 67.6 percent year-on-year). NTT’s authority to bundle its fixed-line services with mobile phone operator NTT Docomo’s mobile service is of concern, as it appears to undermine the rationale for structurally separating the companies.

Spectrum Allocation

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation is at the discretion of the Ministry of Internal Affairs and Communication (MIC), based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. The factors that MIC uses to determine how to evaluate applications have raised questions about the fairness of the allocation process. Several current spectrum allocations create bands unique to Japan (*e.g.*, for self-driving vehicles) that prevent U.S. company technologies from functioning in Japan.

In preparation for Japan’s recent allocation of 5G spectrum, the Diet approved revisions to the spectrum allocation process that improved transparency. In April 2019, MIC awarded spectrum to all four applicants, who were evaluated based on service and business plans, which included cybersecurity requirements, as well as spectrum usage fees. Specifically, MIC applied a series of two-stage screening criteria: absolute screening criteria (minimum threshold requirements that all applicants had to satisfy) and comparative screening criteria (which still allowed MIC discretion to evaluate and choose among applicants). Spectrum allocation charts are now available on MIC’s Radio Use website.

Handset Pricing

In May 2019, the Diet passed an amendment to the Telecommunications Business Act, which: (1) prohibits the bundling of handset purchase and carrier service contracts; (2) sets a cap on allowable discounts for handset prices; and (3) specifies criteria allowing exemptions for retailers to discount non-performing inventory. The revisions are part of a Japanese government effort to improve contract transparency and lower prices for consumers by removing operators’ justifications for high subscription charges based on a

need to recover handset subsidies.

Subsequently, MIC issued implementation ordinances that benefitted Japanese handset manufacturers (who typically change models frequently) and that disadvantage manufacturers who produce fewer handset models with longer product lifecycle. A particularly problematic exception relates to inventory rules. Specifically, if 24 months have passed since the last procurement of a device, a carrier/reseller may discount any unsold devices by 50 percent. However, for devices no longer in production, the 50 percent discount is permitted after only 12 months since the last procurement, and the discount goes up to as much as 80 percent after 24 months. These exceptions to the discount restriction reward Japanese manufacturers, who tend to produce an abundance of cheaper, limited-life devices, and harm foreign companies, including U.S. manufacturers, who create higher-quality devices that retain their functionality and value over time. The U.S. Government continues to push for rules that will enable a level playing field for device manufacturers, increase customer choice, encourage innovation, and allow retailers to have greater control over their businesses.

Imports for Testing and Demonstration Purposes

Unlike the United States, Japan does not allow for the importation of any devices for the purposes of testing or demonstration that do not already hold regulatory authorizations. This restriction gives Japanese companies an advantage in the market, because foreign companies face delays in testing devices on local carrier networks before product launch. These restrictions also make it difficult for foreign companies to collaborate with their local engineers on design, development, accessories, and compatibility with other devices and prevent foreign companies from obtaining local customer feedback during the development process.

Health Information Technology

The United States has urged Japan to improve the quality and efficiency of health care by rapidly implementing health information technology (IT) that is based on international standards, promotes technology neutrality and interoperability, and allows patients greater access to their own health records. Engagement between U.S. and Japanese government health IT experts continues to address health IT issues of mutual interest.

Renewable Energy Services

U.S. companies attempting to sell renewable energy to Japan have reported being denied grid access because the grid is “full”. Legacy utility companies control both transmission and generation in Japan, which reportedly allows them to overstate actual grid usage, and understate capabilities, to prevent competition. In addition, Japan’s technical and safety standards do not appear to reflect international standards, and complicated codes and slow approval processes for new energy technology benefit incumbents.

The Ministry of Economy, Trade and Industry (METI) enforces the laws and regulations that apply to renewable energy in Japan and regularly reviews and revises related rules to account for market factors. As part of Japan’s energy reform process, laws that will unbundle the transmission and generation companies will take effect in 2020. The United States will continue to closely monitor any changes.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Privacy Regulation

Japan's first data protection legislation was the 2003 Act on the Protection of Personal Information (APPI). In 2016, the Personal Information Protection Commission (PPC) was created based on amendments to the APPI. It issued guidelines recognizing the APEC Cross Border Privacy Rules (CBPR) system as a mechanism for companies to demonstrate compliance with Japanese requirements for transferring data outside Japan. APPI took full effect in 2017, and all private enterprises handling the personal information of individuals in Japan are required to conform to this law.

In 2018, Japan and the European Union concluded negotiations on a reciprocal finding of an adequate level of data protection, thereby agreeing to recognize each other's data protection systems as "essentially equivalent." In January 2019, Japan and the European Union mutually recognized each other's data protection laws as providing an adequate level of protection of personal data, allowing personal data to flow freely between the two jurisdictions. As part of the agreement, Japan put in place additional requirements regarding EU data, including supplementary rules governing the transfer of EU data from Japan to a third country, including to the United States.

On April 25, 2019, as part of its standard three-year review cycle, the PPC published an interim report that proposed extending the scope and enforcement methods of extraterritorial applications. Japan's Cabinet approved finalized revisions to the APPI in March 2020, and the bill is expected to be voted on by the Diet in the coming months. The United States will continue to monitor implementation.

Digital Platform Regulation

In February 2019, Prime Minister Abe asked government officials to expedite the creation of a new advisory board, the Digital Market Competition Headquarters, under the Cabinet Secretariat to lead the coordination of competition policy in the digital market. U.S. companies have expressed concern that, as larger players in the market, they will be targeted and subjected to cumbersome regulations not applicable to smaller IT companies with the same practices and that additional regulations and scrutiny based solely on the digital character of a business may not be justified.

In November 2019, Japan's Council on Investments for the Future, chaired by Prime Minister Abe, announced the government was drafting a new law on "Improving Transparency and Fairness of Specified Digital Platforms" that would oblige major online shopping mall operators and app stores to improve transparency in their business practices. A draft overview of the law provided by the government indicates Japan is considering several questionable provisions, such as requiring companies to explain how their search rankings are determined, which if not carefully crafted could have the unintended consequence of facilitating the artificial manipulation of rankings, to the detriment of consumers.

Persistent official references to "GAFA companies" (Google, Apple, Facebook, Amazon) in the announcement of the development of this new law, while excluding references to Japanese or other foreign companies with similar business practices and market share in Japan, suggests a disproportionate focus on U.S. companies. These references and other remarks from government officials have exacerbated concerns that companies may become the targets of regulation simply for being large U.S. IT platformers, rather than for any specific business practice. The draft overview of the law raises an additional concern, as it indicates that the regulations will only apply to digital companies "larger than a certain size...in areas that are particularly important parts of society" and "for which the state of transactions has been clearly ascertained through surveys," giving the government wide discretion to pick and choose which specific companies will

be affected. The Diet is expected to vote on the law by mid-2020. The United States has been extensively engaging with Japan regarding these and other concerns and will continue to monitor the legislation.

In a related action, on December 17, 2019, Japan’s Fair Trade Commission (JFTC) released guidelines on applying the Antimonopoly Act (AMA) to transactions between digital platform operators and consumers, charting new territory for regulating the digital market in Japan. In its “Guidelines Concerning Abuse of a Superior Bargaining Position in Transactions between Digital Platform Owners and Consumers that Provide Personal Information, etc.” (ASBP Platform Guidelines), the JFTC asserts that platform companies are in “a superior bargaining position” (a provision under the AMA) when customers have no choice but to provide their data to use the services and may commit an “abuse” of that position when use of personal data is not fully and accurately disclosed or protected. The United States does not view enforcement of the “abuse of a superior bargaining position” provision under the AMA as an appropriate mechanism to implement these consumer protections, which are more appropriately addressed through privacy and data protection safeguards – regardless of the bargaining position of the parties involved. After receiving input from stakeholders, the JFTC provided several examples in the final guidelines of practices that would or would not constitute an abuse of superior bargaining position. However, the guidelines potentially cover a wide range of conduct that is not described in the examples, leaving businesses without sufficient guidance on how to comply with the law. Imposing conditions on a consumer’s ability to access a service is a common business practice in many, if not most, sectors.

U.S. industry has also noted concerns with several proposed amendments to Japan’s Telecommunications Business Act that MIC is currently developing. Similar to the previously noted concerns about revisions to Japan’s APPI, these proposed amendments could extend Japanese regulation designed for domestic telecommunications suppliers (*e.g.*, confidentiality rules, registration requirements, and service disruption notifications) to global Internet platforms even if a service is supplied on a cross-border basis. Such requirements would be particularly burdensome for foreign small- and medium-sized enterprises (SMEs). The amendments have been submitted for Diet approval in 2020.

The United States will continue to monitor all of these developments and encourage transparency, appropriately tailored regulation, and multi-stakeholder engagement in the process.

INVESTMENT BARRIERS

Japan continues to have the lowest inward FDI as a proportion of total output of any major Organization for Economic Cooperation and Development (OECD) country. According to OECD statistics, the inward FDI stock at the end of 2018 (latest data available) was only 4 percent of GDP in Japan. Inward foreign merger and acquisition (M&A) activity, which accounts for a large portion of FDI in other OECD countries, also lags in Japan.

While the Japanese government recognizes the importance of FDI to revitalizing the country’s economy, its performance in implementing domestic regulatory reforms to encourage a sustained increase in FDI has been uneven. In June 2013 the Japanese government announced its goal of doubling Japan’s inward 2012 year-end FDI stock by 2020, and it confirmed this commitment in its 2018 growth strategy. The government is pursuing a range of policies intended to promote this target.

The number of annual inbound M&A deals has remained relatively low for an economy the size of Japan, raising questions about the adequacy of the government’s measures if its 2020 target is to be achieved. A variety of factors make inbound M&A difficult in Japan, including attitudes toward outside investors, unfinished corporate governance reforms, cross-shareholdings, aspects of Japan’s commercial law regime (*For further information, see the Other Barriers section below*), and a relative lack of financial transparency and disclosure.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Compliance and Deterrence

Japan's AMA provides for both administrative and criminal sanctions against cartels and administrative sanctions for non-cartel anticompetitive conduct. Criminal prosecutions, which have the strongest deterrent effect against anticompetitive behavior in other countries, have been few, and penalties against convicted company officials have been weak, although the JFTC has routinely imposed sizable civil "surcharges" against cartelists. The United States has continued to urge Japan to take steps to maximize the effectiveness of enforcement against cartel and bid-rigging violations of the AMA in order to ensure open and competitive markets.

On June 19, 2019, the Diet approved revisions to the AMA, which provide greater discretion to the JFTC in offering leniency to companies that agree to cooperate in AMA investigations. The JFTC will be compiling guidelines outlining which cooperative behaviors will be associated with penalty exemptions and reductions. The law is expected to come into force at the end of 2020.

U.S. stakeholders in Japan continue to express concern regarding JFTC investigations under the "unfair trade practices" clause of the AMA, in particular the implementation of its prohibition against "abuse of superior bargaining position" (ASBP) and related administrative guidance (*For further information, see the Digital Platform Regulation section above*). They assert that vague and ambiguous standards for liability in this area provide the JFTC with broad enforcement discretion and may make good faith efforts to comply with the AMA difficult. This concern has intensified with the release of the ASBP Platform Guidelines on December 17, 2019, extending application of ASBP to transactions between digital platform operators and consumers. Stakeholders have called for further clarification of each of the forms of abuse listed in the ASBP Platform Guidelines to minimize the substantial uncertainty for companies and users.

In 2019, the JFTC released several surveys regarding business practices in digital industries. These included surveys on business-to-consumer transactions and digital platform trade practices. The findings of these studies are among the bases for the new law on "Improving Transparency and Fairness of Specified Digital Platforms."

Improving Fairness and Transparency of JFTC Procedures

In 2015, the JFTC implemented revised procedures for JFTC hearings and appeals from JFTC orders to address concerns as to whether the preexisting system provided sufficient due process protections. The Diet enacted a partial amendment to the AMA in an omnibus bill on June 30, 2018. The amendment, which took effect on December 30, 2018, includes adoption of a commitment system pursuant to which the JFTC may terminate an investigation based on a party's commitment to undertake specified actions to remedy the alleged violations of the AMA.

U.S. stakeholders in Japan continue to express concern regarding the lack of recognition of attorney-client privilege and severe limitations on witnesses' access to counsel during investigational interviews. In early 2019, reports indicated that the JFTC is considering a limited recognition of the privilege in connection with investigations of unreasonable restraints of trade pursuant to Article 3 of the AMA. The JFTC has also continued work on developing a limited form of privilege, which would be available to leniency applicants, as a condition of the Diet's approval of the discretionary surcharge system that was created by passage of the 2019 amendments to the AMA. The United States will continue to monitor developments and advocate for fuller recognition of attorney-client privilege by the JFTC.

OTHER BARRIERS

Transparency

Advisory Groups

Advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan. However, the process of forming these groups can be opaque, and often non-members are not offered meaningful opportunities to provide input into these groups' deliberations. The United States continues to urge Japan to ensure transparency with respect to the formation and operation of advisory councils and other groups convened by the government by adopting new requirements to ensure that ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in, and directly provide input to, these councils and groups.

Public Comment Procedure

Many U.S. companies remain concerned about inadequate implementation of the public comment procedure by Japanese ministries and agencies. For example, in some cases, comment periods appear unnecessarily short, and comments do not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The United States has stressed the need for Japan to improve the system, such as by 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 M&A, ensure the availability of reasonable and clear incentives for many such transactions, and take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements. The United States welcomed steps taken in the 2015 revised Companies Act and Corporate Governance Code to increase management accountability and corporate transparency and continues to urge Japan to further improve its commercial law and corporate governance systems in order to promote efficient business practices, capital markets development, and shareholder rights in accordance with international standards. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting and strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders.

Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of nontariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low.

Nontariff barriers include certain issues relating to unique standards and testing protocols, an insufficient level of transparency, including the lack of opportunities for input by interested persons throughout the process of developing regulations, and hindrances to the development of distribution and service networks. These barriers, together with other past and current policies and practices, have had the long-term effect of excluding and disadvantaging U.S. manufacturers in the Japanese market.

Medical Devices and Pharmaceuticals

According to figures from Japan's Ministry of Health, Labour, and Welfare (MHLW), imported U.S. medical devices held a 27 percent market share in Japan in 2018 and were valued at \$7.5 billion (latest data available). The U.S. market share of medical devices increases to 60 percent if local production in Japan by U.S. companies is included. MHLW figures show that imports of U.S. pharmaceuticals were valued at \$6.7 billion and comprised 7 percent of the overall Japanese market in 2018 (latest data available). The total market share of U.S.-origin pharmaceuticals in Japan is estimated to be approximately 20 percent if local production by U.S. firms and compounds licensed to Japanese manufacturers is included.

Over the last decade, the government of Japan has increased the appeal of Japan's pharmaceutical and medical device markets by reducing regulatory approval timelines and by improving the predictability of the reimbursement pricing system. However, reimbursement pricing changes in 2018 and 2019 have eroded this progress.

For example, in 2018, Japan made several changes to its Price Maintenance Premium (PMP) rule, which rewards innovation and allows for pricing stability throughout the patent life of a medicine. The number of products that can qualify for the PMP was reduced, and fewer innovative companies now receive the full benefit of the PMP due to newly established requirements. Several company factors taken into consideration in PMP calculations, such as the number of local clinical trials and local product launches by the company submitting the application, appear to make it easier for Japanese companies to qualify for top premiums and are unrelated to the degree of innovation of the individual product under consideration. Reimbursement outcomes suggest that U.S. companies, especially small and medium-sized enterprises, are at a disadvantage compared to Japanese companies.

In addition, U.S. stakeholders are concerned that Japan's proposed move from the current biennial price revision to an annual price revision and its implementation of a new Health Technology Assessment (HTA) will create significant uncertainty about prices for advanced medical devices and innovative pharmaceuticals, undermining research and development and investment planning for capital-intensive product developments in Japan. Stakeholders have expressed particular concern about changes proposed in November 2019 to Japan's re-pricing rules for when existing drugs are approved to treat new indications. The proposed revision would allow a product's price to move towards that of a "reference drug" that has similar indications, even when the pharmacological actions are different. This rule would apply only if there is a large market size for the reference drugs and a significant expansion in the size of the product's market due to the new indication. These special criteria have raised industry concerns that the proposed rule may have been designed to target specific anticipated expanded indications of pharmaceuticals manufactured by foreign companies. Industry argues that the revision would further erode the predictability of the Japanese market and would reduce incentives for the development of new uses for existing products by limiting available returns for the products that help the largest number of patients.

During each two-year reimbursement cycle, MHLW reviews the functional categories used for grouping products in order to set reimbursement rates. According to industry, stakeholders are not provided sufficient opportunity to provide their views during this process. Industry is also concerned that the variation in product functionality within these categories has become more pronounced in recent years, often resulting in higher reimbursements for legacy, domestically made medical devices in comparison to innovative, often imported products.

U.S. stakeholders have expressed strong concerns about a lack of transparency and stakeholder consultation in the development all of these pricing reform initiatives. The United States continues to urge Japan to implement predictable and stable reimbursement policies that reward innovation, to solicit and consider the

input of all stakeholders, including U.S. stakeholders, when developing any measures related to these policies, and to follow transparent processes in the present and future development of any new policies and measures. The United States also encourages Japan to continue working with U.S. industry in its efforts to improve the regulatory environment and continues to urge Japan to move towards international harmonization of its regulations in clinical development, multiregional clinical trials, and risk management.

Nutritional Supplements

In Japan, nutritional supplements are regulated as a part of a loosely defined “health food” subcategory of foodstuffs, unlike in the United States, where nutritional supplements are regulated independently. Japan has taken steps to streamline import procedures and to improve access in this market. However, many significant market access barriers remain as of 2020, including a 12.5 percent tariff on vitamin imports.

Japan’s Consumer Affairs Agency (CAA)’s Food with Functional Claims (FFC) is a third food-related category under the Food with Health Claims system, parallel to two other premarket government approval systems, Foods for Specified Health Uses (FOSHU) and Foods with Nutrient Function Claims (FNFC). These processes apply to both imported and domestic products. Producers of most nutritional supplements are generally unable to obtain FOSHU approval or FNFC designation due to FOSHU’s costly and time-consuming approval process and FNFC’s standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify for FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system. U.S. industry remains concerned that the FFC regulations on health food and dietary supplements are not in line with global best practices.

Personal Care Products and Quasi-Drugs

According to the United Nations (UN Comtrade), Japan’s imports of personal care and cosmetics products were valued at approximately \$3.9 billion in 2019, making Japan one of the top five importers for the global industry. These data also show that, with \$535 million in exports in 2019, the United States is consistently among the top five personal care and cosmetics exporters to Japan, representing 14 percent of all imports. Top U.S. exports include skincare, haircare, makeup preparations, fragrance, and toiletry goods such as pre- and after-shaving products, oral care, and bath preparations.

Delays in updates to market authorization requirements for “quasi-drugs,” which include cosmetics products that are generally classified as over-the-counter drugs in the United States, as well as delays in the adoption of an online system, are among the barriers to the continued growth of U.S. exports. Adoption of a monograph system intended to speed up the time required to register products as quasi-drugs under Japan’s Pharmaceutical and Medical Devices Act continues to be delayed. As a result, products that contain active ingredients already approved for use in Japan, such as anti-dandruff shampoos and skin care, may require six months or more to receive market approval. MHLW has committed to work with industry players and local prefectural governments to develop a monograph system, known as “Quasi-Drug Additives Spec Codex” (besshi kikakushu), which lists the approved uses for previously reviewed ingredients and claims. Such a Codex would speed up approval times and bring consistency to the reviews of products by MHLW and the local governments, similar to the system used by the U.S. Food and Drug Administration.

As a pilot to assist MHLW in moving towards formalizing a monograph system, U.S. and local industries worked with MHLW to develop product approval guidance for medicated hair products in May 2014 and for anti-bacterial soaps in May 2018. U.S. industry is calling on MHLW to develop similar standards for other quasi-drug cosmetics and to consider how it might expand the use of permitted claims, so long as they can be substantiated. The United States will continue to monitor these and other developments.

Aerospace

The government of Japan has emphasized the importance of encouraging the growth and competitiveness of domestically produced defense products but continues to look for partnerships or imported solutions should domestic producers be unable meet performance, cost, schedule, or technical requirements. Japan acquires more than 90 percent of its defense imports from the United States and has shown a growing interest in interoperable technology with advanced capabilities. U.S. military sales have increased significantly every year since 2012, while growth of U.S.-licensed military products produced in Japan has remained relatively flat. Japan has issued a five-year defense procurement plan to expand its defense spending through fiscal 2023 in response to regional security challenges. The United States will continue to monitor developments in this area, as Japan's direct purchase of U.S. military systems is expected to continue to grow. However, one important impediment to further bilateral engagement in this sector is concern about Japan's ability to protect advanced defense technologies. Japan has recommitted to strengthen information security practices across the whole of government.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was \$696 million in 2019, a 199.4 percent increase (\$463 million) over 2018. U.S. goods exports to Jordan were \$1.5 billion, down 6.8 percent (\$107 million) from the previous year. Corresponding U.S. imports from Jordan were \$2.2 billion, up 19.7 percent. Jordan was the United States' 69th largest goods export market in 2019.

U.S. exports of services to Jordan were an estimated \$721 million in 2018 (latest data available) and U.S. imports were \$849 million. Sales of services in Jordan by majority U.S.-owned affiliates were \$57 million in 2017 (latest data available), while sales of services in the United States by majority Jordan-owned firms were \$2 million.

U.S. foreign direct investment (FDI) in Jordan (stock) was \$232 million in 2017 (latest data available).

TRADE AGREEMENTS

The United States-Jordan Free Trade Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA), which entered into force on December 17, 2001, the United States and Jordan completed the final phase of tariff reductions on January 1, 2010. Jordan imposes zero percent duties on nearly all U.S. products, with exceptions for a few product lines, such as alcoholic beverages and pornographic materials. Following consultations under the United States-Jordan Joint Committee, in 2012 Jordan endorsed the United States-Jordan Joint Principles on International Investment and Joint Principles for Information and Communication Technology (ICT) Services.

IMPORT POLICIES

Taxes

Jordan's General Sales Tax law allows the government to impose a "Special Tax" at the time of importation in addition to the general sales tax. Over the past several years, Jordan has increased special taxes on certain goods, changes which can be unpredictable. In July 2018, Jordan increased to 20 percent a tax on carbonated drinks initially imposed at 10 percent in February 2017. U.S. beverage companies report that the increase has reduced their sales. In February 2019, Jordan reduced the special tax on carbonated drinks to 15 percent, after coordinated advocacy efforts. The United States continues to work with Jordan to resolve this issue by encouraging consultations with the private sector.

Nontariff Barriers

Import Licensing

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approvals process can be time consuming and at times lacks transparency. The United States continues to engage with Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry, Trade, and Supply occasionally issues directives requiring import licenses for certain

goods or categories of goods and products in newly emerging or protected sectors. Jordan requires a special import license prior to the importation of telecommunications and security equipment.

The U.S. poultry industry has reported difficulty obtaining import licenses for Jordan. Imports of U.S. poultry products were down 37 percent in the first nine months of 2019, compared to the same period in 2018.

Customs Barriers and Trade Facilitation

Jordan ratified the WTO Trade Facilitation Agreement (TFA) on February 22, 2017 and self-designated its implementation schedule for each obligation under the TFA. Jordan is overdue in submitting three transparency notifications related to (1) import, export, and transit regulations (Article 1.4), (2) the use of customs brokers (Article 10.6.2), and (3) customs contact points for the exchange of information (12.2.2). These notifications were due on February 22, 2017 according to Jordan's self-designated schedule.

TECHNICAL BARRIERS TO TRADE

Jordan recognizes and accepts international standards and specifications utilized by U.S. producers. However, Jordan's signing of a twinning program¹ with the European Union (EU) on standards in February 2018 has begun to create obstacles to U.S. exporters in product areas where standards developed by U.S.-domiciled standards organizations differ from those of the EU. In addition, Jordan periodically imposes additional regulatory requirements that serve as barriers to trade. Without prior notice, in late 2018, Jordan's Food and Drug Administration (JFDA) implemented a rule that restricts the sale of and distribution of food products labeled as containing genetically engineered ingredients. JFDA followed this announcement with draft regulations on imported genetically engineered products that, if adopted as drafted, would disrupt trade. During the July 2019 Joint Committee Meeting, the United States raised concerns over Jordan's treatment of U.S. products labeled as "containing or may contain genetically engineered ingredients." The two countries collaborated on language for a draft regulation regarding the entry of genetically engineered products to Jordan. The issue had yet to be fully resolved as of the end of 2019.

SUBSIDIES

Jordan abolished its export subsidy scheme effective January 1, 2019, when the new Income Tax Law Number 38 went into effect. In November 2019, however, Jordan announced a stimulus package to spur the economy and attract investment, which grants the industrial sector a number of incentives, including reduced electricity tariffs and a direct cash payment to exporting industries equal to three percent of their export value in the first year and five percent on any increase in export value the following year. The United States has raised concerns about these new measures and will continue to press Jordan to ensure that any payments are provided consistent with Jordan's obligations under international agreements.

GOVERNMENT PROCUREMENT

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA) but has been an observer of the WTO Committee on Government Procurement since March 2000. In 2002, Jordan commenced the process of acceding to the GPA, with the submission of its initial offer. Jordan subsequently submitted

¹ Twinning is an EU technical assistance device that provides support for the implementation and enforcement of EU standards.

several revised offers in response to requests by the United States and other GPA Parties for improvements to market access. Negotiations on Jordan's accession continue.

In February 2019, the Cabinet passed the Government Procurement Bylaw No. 28, which grants priority to a domestic bid over a foreign bid if the bids are equivalent in terms of requirements, specifications, and price. Additionally, Jordan offers domestic companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

INTELLECTUAL PROPERTY PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, prosecution efforts need to be strengthened, particularly with respect to utilizing *ex officio* authority to pursue criminal investigations without waiting for initiation by right holders.

BARRIERS TO DIGITAL TRADE

Information and communication technology firms operating in Jordan are, in many cases, required to maintain a local presence and to contract with local service suppliers. Local presence requirements can hamper the ability of firms to supply services on a cross-border basis, while requirements to contract with local service suppliers can disrupt the business of foreign firms that operate on a global basis.

Jordan maintains restrictions on app-based transportation services. For example, drivers using such services must obtain a license that costs up to \$600 and that limits the driver to working for only one service supplier. Additionally, regulations place full liability for driver actions on the app provider through which the driver is sourcing work.

OTHER BARRIERS

Export Policies

Jordan imposes a \$50 per ton tax on exports of steel scrap, discouraging its exportation.

KENYA

TRADE SUMMARY

The U.S. goods trade deficit with Kenya was \$276 million in 2019, a 0.6 percent decrease (\$2 million) over 2018. U.S. goods exports to Kenya were \$391 million, up 7.0 percent (\$25 million) from the previous year. Corresponding U.S. imports from Kenya were \$667 million, up 3.7 percent. Kenya was the United States' 111th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Kenya (stock) was \$380 million in 2018, a 6.2 percent decrease from 2017.

TRADE AGREEMENTS

Kenya is a member of the East African Community (EAC) free trade area and customs union, and a member of the Common Market for Eastern and Southern Africa (COMESA) free trade area. As a member of the EAC, Kenya is negotiating the Tripartite Free Trade Area among the EAC, COMESA, and the Southern African Development Community. Kenya ratified the European Union-EAC Economic Partnership Agreement (EPA) in 2016, although the EPA is not yet in force. Kenya ratified the African Continental Free Trade Agreement, which entered into force on May 30, 2019 and will become operational on July 1, 2020.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Kenya's average Most Favored Nation (MFN) applied tariff rate was 13.5 percent in 2018 (latest data available). Kenya's average MFN applied tariff rate was 20.3 percent for agricultural products and 12.4 percent for non-agricultural products in 2018 (latest data available). Kenya has bound 16.4 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 94.5 percent.

Kenya generally applies the EAC Customs Union's Common External Tariff, which includes three tariff bands: zero percent duty for raw materials and inputs; 10 percent duty for processed or manufactured inputs; and 25 percent duty for finished products. For certain products and commodities deemed "sensitive," Kenya applies *ad valorem* rates above 25 percent. This includes rates of 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, 100 percent for sugar, and 50 percent for textiles. For some products and commodities, tariffs vary across the five EAC member states.

The Kenyan government sometimes waives tariffs when domestic agricultural prices exceed certain levels and there is a need to stabilize prices.

Previously, the EAC exempted solar and wind energy products from import duties. However, in June 2016, the EAC narrowed this exemption to include only those items related to the development and generation of solar and wind energy. The duties subsequently imposed on spare parts and accessories to solar equipment reportedly have had a negative impact on the business operations of solar home system companies, although Kenya has not applied them uniformly in practice. Some stakeholders have expressed concern that the

amendment to the EAC's Exemptions Regime is ambiguous because it does not define spare parts and accessories to solar equipment. Separately, Kenya's 2018 Finance Bill exempted the supply or import of certain specialized equipment for the development and generation of solar and wind energy from paying value-added tax (VAT). This included deep cycle batteries, which use or store solar power. The 2019 Finance Bill amended this exemption by requiring the cabinet secretary for energy to issue a recommendation before a VAT exemption is granted.

Taxes

The 2019 Finance Bill, adopted in November 2019, amends the Income Tax Act by taxing income accrued through a digital marketplace. The bill defines the digital marketplace as a "platform that enables the direct interaction between buyers and sellers of goods and services through electronic means," which would include taxing transactions on Internet platforms. The Kenya Revenue Authority (KRA) has yet to release guidance on the implementation of this provision.

The current VAT Act, adopted in 2013, reduced the number of VAT-exempt items from 400 to 27, purportedly to simplify tax administration, enhance tax compliance, and eradicate a backlog of refunds. The 2013 Act went into effect with few specific guidelines, resulting in uncertainty surrounding the application of VAT rules. The 2015 amendments to Kenya's VAT rules clarified some items that are VAT exempt, including: aircraft engines, aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase.

In 2018, the KRA exempted from VAT certain facilities and machinery used in the manufacturing of goods, including nuclear reactors; boilers; machinery and mechanical appliances; electrical machinery and equipment and parts; sound recorders and reproducers; television image and sound recorders and reproducers; and parts and accessories thereof.

In 2018, the KRA imposed VAT on raw material imported for the manufacture of garments and leather specifically related to Export Processing Zones to protect local livestock keepers and producers of raw materials used in tanneries. In September 2018, the KRA also began imposing an eight percent VAT rate on fuel products including petrol, diesel, jet fuel, and kerosene after ending VAT postponements that had been in place since 2013. In 2019, the KRA exempted from VAT additional inputs, including machinery and equipment, used for the construction of plastic recycling plants.

VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds. In September 2014, the Kenyan government commissioned an audit of ballooning VAT refund claims. According to the Kenya Private Sector Alliance, a private-sector trade association, the audit was completed and a substantial amount of VAT refund claims were paid out. The 2017 VAT Regulations, which further implemented the 2013 VAT Act, reduced the number of VAT refund claims. However, the number of VAT refund claims that are pending or were processed during the 2018 and 2019 fiscal years remains unclear.

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the KRA has offered an alternative dispute resolution mechanism to provide taxpayers with an alternative, fast-track avenue for resolving some tax disputes.

Nontariff Barriers

In 2017, the EAC introduced the EAC Elimination of Non-Tariff Barriers Act, which is currently under review by Kenya and other EAC partner states.

Quantitative Restrictions

In the energy sector, the Energy and Petroleum Regulatory Authority 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.

Import Bans

In June 2016, Kenya doubled the import duty rate on articles of used clothing as a first step to implement an EAC-wide import ban on these products. In July 2017, in response to concerns of stakeholders, including U.S. exporters of used clothing, Kenya reverted to the pre-June 2016 duty rate on these products. In 2019, Kenya continued to apply the pre-June 2016 import duty rates.

Customs Barriers and Trade Facilitation

Kenya ratified the WTO Trade Facilitation Agreement (TFA) in December 2015. Kenya is overdue in submitting one transparency notification related to import, export, and transit regulations (Article 1.4). This notification was due on February 22, 2017, according to Kenya's self-designated implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Kenya requires all importers to pay an import declaration fee of 3.5 percent (up from 2.25 percent in 2018) based on the customs value of imports and to meet certain document requirements. One critical document that importers must obtain is a Certificate of Conformity (CoC) from a government-approved pre-shipment inspection company. The pre-shipment inspection companies contracted by the Kenya Bureau of Standards (KEBS) to inspect and certify entry documents for imports from the United States are Société Générale of Surveillance (SGS), Intertek International Ltd., and Bureau Veritas. If an importer does not obtain a CoC before a shipment arrives in Kenya, its goods can be inspected at the port of entry and sometimes are rejected by KEBS and returned at the shipper's expense. If the goods are permitted inspection at the port of entry, the cost of inspection is approximately 20 percent of the total customs value of the shipment. After obtaining a CoC or undergoing inspection at the port of entry, the importer must receive an Import Standardization Mark, a stick-on label affixed to each imported article or its retail packaging, from the Kenya Bureau of Standards. Kenya asserts that these import controls are necessary to address health, environmental, and security concerns.

In September 2017, KEBS began to require a Pre-Export Verification of Conformity (PVoC) for the import of all medical equipment, with the stated goal of protecting the public against imported goods that do not comply with local quality standards. If a good undergoes the PVoC process and passes the investigation, it no longer requires an additional CoC. In June 2019, KEBS expanded the PVoC requirement to imports of all pharmaceutical products. In December 2019, the Kenyan government issued the [Standards \(Verification of Conformity to Standards and Other Applicable Regulations of Imports\) Regulations, 2019](#), which further required a PVoC for imports of all goods not meeting certain criteria for exemption. For goods arriving at the port of entry without undergoing a PVoC to obtain a CoC, the cost of verification is 20 percent of the customs value of the shipment.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

On November 21, 2012, pursuant to a Kenyan Cabinet decision and Presidential order, the Kenyan Ministry of Public Health ordered public health officials to remove from the market all foods, feed, and seeds derived from agricultural biotechnology and to ban genetically engineered (GE) food and feed imports. Despite announcing in August 2015 that the Kenyan government would lift the import ban on GE products by October 2015, the government maintained the ban throughout 2019. Kenya is in the process of commercializing Bt cotton, and research continues on other GE crops.

Kenya's GE ban has blocked both food aid and commercial U.S. agricultural exports derived from agricultural biotechnology. The restriction affects U.S. exports of processed and unprocessed foods and feed ingredients, such as soy, corn, and distiller dried grains with solubles. The GE import ban also affects transshipment. Food aid shipments of GE commodities destined for inland east African countries, which would ordinarily enter through the Port of Mombasa, must be diverted to other ports or reformulated with non-GE commodities.

In September 2017, Kenya approved open field trials for GE cotton (MON 15985) and derived varieties, and for GE corn developed for drought tolerance and insect resistance under the Water Efficient Maize for Africa (WEMA) project. While political bottlenecks have slowed the process for dissemination and use of GE corn, the national performance trials for GE cotton are complete. In December 2019, Kenya approved the first commercial cultivation of Bt cotton beginning in March 2020. In addition to cotton, Kenya's commercialization of GE *Gypsophila* flower (baby's breath) intended for export to the international cut flower market, including the United States, is stalled due to concerns on its potential impact on trade with the European Union (EU).

The U.S. Government continues to engage the Kenyan government and stakeholders to support the adoption of GE and other emerging technologies.

Meat, Milk, and Poultry Products

Kenya maintains complex, non-transparent, and costly requirements for importation of all meat, dairy, and poultry products including a standardized sanitary certification and a "Letter of No Objection to Import Permit" (no-objection letter) from the Department of Veterinary Services (DVS) under the Ministry of Agriculture, Livestock, and Fisheries. DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and specifically address the market need the import would meet before issuing a no-objection letter. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Although Kenya purports to prohibit imports only on sanitary grounds, importers have reported that, in practice, DVS has at times provided them with other rationales for denying permits, such as the local availability of a certain product. DVS reportedly has never formally provided this guidance in writing to the permit applicants.

Plants and Plant Products

Since 2006, Kenya has banned wheat from the U.S. Pacific Northwest over concerns of 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. USTR along with the U.S. Department of Agriculture engaged the Kenyan government on multiple occasions to resolve this issue. A

certification protocol was approved by Kenya in January 2020, resolving this issue and opening the market to U.S. Pacific Northwest wheat.

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion (ppb) and a 13.5 percent maximum moisture content. As a result, most U.S. exports are denied permits for importation. The aflatoxin limit is lower than the Codex Alimentarius Commission and U.S. standard of 20 ppb. Under special circumstances, such as food shortages, Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive compared with corn not subject to these requirements.

Kenya also restricts popcorn imports to a six percent maximum moisture requirement. The U.S. limit is 12.5 percent to 15 percent.

Kenya does not permit whole pea imports due to concerns about the *pseudomonas pisi* fungus, but permits the import of split peas. Kenya also bans bean imports due to the occurrence of *corynebacterium flaccumfasciens* bacteria in some parts of the United States. Lentils are banned due to the threat of darnel weed; however, darnel weed already exists in Kenya.

GOVERNMENT PROCUREMENT

In May 2015, President Kenyatta announced an initiative dubbed “Buy Kenyan Build Kenya” to require state ministries, departments, and agencies to procure at least 40 percent of their supplies locally. For example, government entities are required to give an exclusive procurement preference to motor vehicles and motorcycles produced by companies that have assembly plants in Kenya.

In January 2016, the Public Procurement and Asset Disposal Act (the Act) came into force, reserving procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than Ksh 50 million (approximately \$487,000), the preference for Kenyan firms and goods is exclusive. Where the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the Act requires a report detailing evidence of an inability to procure locally. The Act calls for at least 30 percent of government procurement contracts to go to firms owned by women, youth, and persons with disabilities. The Act further reserves 20 percent of procurement contracts tendered at the county level for residents of that county.

U.S. firms have had limited success bidding on government tenders in Kenya. There are widespread reports that corruption often influences the outcome of public tenders, and many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms. All Kenyan tenders and procurement are required to be undertaken through the Integrated Financial Management Information System (IFMIS) as of January 2019. In 2014, the government launched the IFMIS to improve transparency and accountability in government financial management through the automation of centralized 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 mandated national and county government institutions to use the electronic procurement system, but subsequently suspended the order after receiving complaints about insufficient connectivity and technical capacity in county government offices, and apathy from county government officials. In December 2016, the National Treasury announced the allocation of \$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 vulnerable to manipulation. IFMIS vulnerability includes the duplication of

authorized users' identities and non-users' ability to remotely access IFMIS. The 2017-2018 fiscal year budget allocated \$1.5 million for continued rollout of IFMIS to the counties.

Kenya is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Kenya's Statute Law (Miscellaneous Amendments) Act of 2018, passed in January 2019, includes new amendments that improve the protection and enforcement of intellectual property (IP) by updating its copyright and trademark legislation, including new amendments that enable recordation of trademarks with customs authorities. However, concerns related to the widespread availability of counterfeit and pirated goods remain. Stakeholders also have raised concerns regarding the widespread distribution of IP-infringing content online, and have identified opportunities for increased collaboration with Internet service providers to expeditiously remove or disable access to infringing material residing on their networks.

SERVICES BARRIERS

The Private Security Regulations Act of 2016 restricts foreign participation in the private security sector by requiring that at least 25 percent of shares in private security firms be held by Kenyans.

Insurance Services

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyans or citizens of the EAC partner states. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to state-owned Kenya Reinsurance Corporation (Kenya Re). These discriminatory restrictions prevent U.S. insurers from fully accessing the Kenyan market. Although regulatory approval can be sought, Kenya generally prohibits cross-border Difference-in-Conditions and Difference-in-Limits insurance trade, which is an important type of insurance for facilitating U.S. exports by multinational enterprises because it covers their unique risks.

Telecommunications Services

Licensed telecommunications service providers are required to maintain 20 percent ownership and control by Kenyan persons within four years from the issuance of a license. Additionally, participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment for foreign investors.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Kenya's Data Protection Act, 2019, passed in November, includes unclear and potentially restrictive provisions governing the cross-border transfer of personal information. The Act requires that data controllers provide "proof" that personal data will be secure as a condition for transferring the data outside Kenya, but does not describe what would constitute proof. The Act also requires consent of the data subject as a condition for the cross-border transfer of any "sensitive personal data," a broad category of information. Such conditions may prove burdensome for firms that supply services on a cross-border basis or depend on data processing systems located abroad. Additionally, the Act empowers a political official to prohibit the cross-border transfer of certain categories of data, creating uncertainty for businesses operating in Kenya that depend on cross-border data flows.

Internet Services

The Computer Misuse and Cybercrimes Act was signed in May 2018, though certain key provisions of the Act remain suspended by Kenya's judiciary, pending review of a petition challenging the constitutionality and legality of those provisions. Some of the suspended provisions of the Act could limit online access to information and curtail the creation of user-generated content, potentially limiting the ability of some service providers to operate profitably in Kenya. A ruling is expected in 2020.

In July 2019, Kenya introduced the Kenya Information and Communication (Amendment) Bill, 2019, which proposes to create a licensing process and regulatory obligations for social media service suppliers, as well as a set of "responsibilities" for social media users. While the bill has not been passed into law, if implemented in its current form, it would impose burdens on the supply of certain Internet-based services.

The East African Legislative Assembly passed the EAC Electronic Transactions Act in 2015. While the Act provides some protection of intermediaries from liability for non-IP-protected content created by third parties, it fails to include any counter-notice procedures for a third party to challenge a content takedown request, and removes legal protections if the intermediary profits from the content. Lack of a counter-notice provision exposes internet intermediaries to business process disruptions from potentially frivolous takedown notices. Removing legal protection for intermediaries that profit from the content could remove an entire class of intermediaries from the scope of liability protections and could result in a general obligation on these intermediaries to monitor internet traffic. Depending on Kenya's implementation of this Act, it could serve as a serious barrier for internet platforms seeking to supply services in Kenya.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Kenya imposes foreign ownership limitations in several sectors, often in combination with local content requirements. For example, the Communications Authority, Kenya's telecommunications regulator, requires 20 percent Kenyan shareholding within three years of receiving a license. The 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring that Kenyans hold at least 25 percent of shares in private security firms. The Kenya Insurance Act (2010) restricts foreign capital investment to two thirds, with no single person controlling more than 25 percent of an insurer's capital. Additionally, in 2015, the government imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges. The Nairobi Securities Exchange does not have foreign ownership restrictions and listed companies can be 100 percent foreign owned.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies; requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies; and requires large-scale mining operations to offer 20 percent equity on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent "free-carried interest" (free equity stake in capital operations) to the Kenyan government.

The 2011 National Construction Authority Act imposes local content restrictions on "foreign contractors," defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The Act also contains provisions requiring foreign contractors to hire from the local labor market, unless the National Construction Authority determines the necessary technical skills are unavailable locally. In addition, the Act requires foreign contractors to enter into subcontracts or joint ventures assuring that at least 30 percent of the contract work is done by local firms.

Local Content Requirements

When making initial investments, foreign investors with foreign staff are required to submit plans for the gradual phasing out of non-Kenyan employees. In considering an application for investment, the Kenya Investment Authority reviews the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and government revenues.

In November 2018, the Kenyan senate passed the Local Content Bill applicable to the oil and gas and other extractive sectors. The bill, which has been forwarded to the National Assembly for final approval, 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, employ the local workforce, and develop local employment skills. The plan also must include a local research and development plan, a plan for transferring technology to Kenyan firms, and a plan for replacing non-Kenyan employees with Kenyan employees over time. The bill further requires the Kenyan government to “encourage” joint ventures with local firms. The proposed bill gives the Cabinet Secretaries responsible for the extractive sectors a mandate to review and reject applicants’ local content plans and to prescribe regulations specifying minimum levels of local content. U.S. business associations have raised concerns over the bill, pointing to its lack of clarity, its overlap with the 2016 Mining Act, and whether it is consistent with regard to Kenya’s WTO obligations. The United States also has raised concerns with the Kenyan government.

In 2015, the Department of Immigration issued a new directive making it more difficult for non-Kenyans to obtain work permits. In 2018, the Kenyan Ministry of Interior and Coordination began applying additional administrative and policy changes to the work permit process for foreigners wishing to work in Kenya. Foreigners are now required to have an approved work permit before arrival in Kenya, and renewal of work permits must now be submitted at least four months prior to the expiry of their current permits. Using a valid tourist visa while processing a work permit application is no longer allowed. Under the new rules, foreign nationals must apply for alien registration before a work permit can be formally endorsed. These rules have led to long delays in the processing of work permits for foreigners.

State Enterprises

According to Kenya’s most recent notification to the WTO, in 2006, Kenya does not have any state-trading enterprises. However, as of 2013 (latest data available), there were approximately 262 state corporations operating in various sectors of the economy. According to the WTO Secretariat, each state corporation is under oversight of a line ministry, which is responsible for ensuring its proper management.

Kenya has been slow to open public infrastructure to competition because the government considers state-owned companies that control infrastructure to be “strategic” enterprises. As a result, reform and partial privatization of the telecommunications, power, and rail sectors are progressing slowly.

For example, Kenya wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, and limits competition with these companies. Other state enterprises, including Kenya Electricity Generating Company (KenGen), Kenya Electricity Transmission Company (KETRACO), Kenya Power and Lighting Company (KPLC), and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. In July 2016, KPLC changed its internal procurement rules to require that 80 percent of supplies be sourced from Kenyan-registered companies reportedly to encourage foreign suppliers to establish manufacturing facilities in the country.

Certain state parastatals have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed market share; Kenya Seed Company, which has fewer marketing barriers than its foreign competitors do; and the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some state enterprises have also benefitted from easier access to government guarantees, subsidies, or credit at favorable interest rates.

Land

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The cumbersome and opaque process required to acquire land raises concerns about security of title, particularly given past abuses relating to the distribution and redistribution of public land.

Complicated land transactions procedures, lack of adequate urban planning, and under-investment in land demarcation expose investors to the risk of receiving fake title deeds or finding a plot with multiple titles and unauthorized sales. Clear titles are unavailable for an estimated two-thirds of Kenyan land. The 2016 Community Land Bill made it easier for communities to claim title over their ancestral land and receive documentation.

In August 2019, Kenya passed the Land Index (amendment) bill, which guides compensation for land compulsorily acquired for use in government projects. Among other changes, the value of compensation now will be based on market rates and tax returns for the land in question, data that is often non-existent for most community land. This could present problems in the pastoralist-dominated regions of northern Kenya where large projects, including the Lamu Port South Sudan and Ethiopia Transport Corridor, would need to be built on community land that may lack the necessary data to determine the value of compensation.

OTHER BARRIERS

Bribery and Corruption

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report they find it difficult to succeed against competitors willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurement tender processes at both the national and county level. The government has not implemented anticorruption laws effectively. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan government.

The Kenyan government began an anticorruption campaign using the Ethics and Anticorruption Commission (EACC) and Office of the Director of Public Prosecution to open cases against high profile offenders. While some cases brought to light by the EACC have resulted in convictions, no high-profile cases have ended in conviction.

Despite efforts to increase efficiency and public confidence in the judiciary, a backlog of cases and continuing corruption—both perceived and real—reduce the credibility and effectiveness of Kenya's judicial system. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence outcomes in court cases. An Employment and Labor Relations Court exists in Kenya, but it is plagued by long delays in rendering judgments. As such, foreign and local investors risk lengthy and costly legal procedures.

Export Barriers

Under the 2014 Scrap Metal Act, Kenya restricts the export of any form of scrap metal absent authorization by the Ministry of Industry, Trade, and Cooperatives (MoITC) in order to discourage vandalism of infrastructure and to encourage domestic manufacturing that uses scrap metal as an input. The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia, bixa orellana, cashew nuts, and pyrethrum without express authorization from the Cabinet Secretary for Industry, Trade, and Cooperatives. In June 2018, the MoITC introduced an export levy of 20 percent on the approved export of copper waste and scrap metal to encourage local smelting, enhance the value of local copper waste, and discourage black market export of copper cables and wires.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with South Korea was \$20.6 billion in 2019, a 16.1 percent increase (\$2.9 billion) over 2018. U.S. goods exports to South Korea were \$56.9 billion, up 0.7 percent (\$391 million) from the previous year. Corresponding U.S. imports from South Korea were \$77.5 billion, up 4.4 percent. South Korea was the United States' 7th largest goods export market in 2019.

U.S. exports of services to Korea, South were an estimated \$23.1 billion in 2019 and U.S. imports were \$12.8 billion. Sales of services in Korea, South by majority U.S.-owned affiliates were \$13.9 billion in 2017 (latest data available), while sales of services in the United States by majority Korea, South-owned firms were \$23.9 billion.

U.S. foreign direct investment (FDI) in South Korea (stock) was \$41.5 billion in 2018, a 0.2 percent decrease from 2017. U.S. direct investment in South Korea is led by manufacturing, finance and insurance, and wholesale trade.

TRADE AGREEMENTS

United States–Korea Free Trade Agreement

The United States and Korea reached agreement in 2018 to modifications and amendments to the United States–Korea Free Trade Agreement (KORUS) and a related letter exchange. These modifications and amendments entered into force on January 1, 2019 and included improvements to remove a range of regulatory and non-tariff barriers, including doubling from 25,000 to 50,000 the number of U.S.-origin vehicles per manufacturer per year that may be imported and sold in Korea that meet U.S. safety standards in lieu of Korean safety requirements. Progress also was made on outstanding issues relating to the implementation of KORUS, including agreement by the Korean government to follow certain globally accepted customs-related principles and to establish a working group to address issues related to origin verification.

IMPORT POLICIES

Tariffs

Under KORUS, Korea has now eliminated tariffs on approximately 95 percent of U.S. industrial goods exports. Tariffs continue to be phased out for certain chemicals, wood products, machinery and parts, and seafood. Korea has also eliminated tariffs on almost two-thirds of U.S. agricultural exports. U.S. agricultural products now entering Korea duty free include: wheat, corn, soybeans for crushing, whey for feed use, hides and skins, cotton, cherries, pistachios, almonds, orange juice, grape juice, and wine. Other agricultural products receive duty-free access under tariff-rate quotas (TRQs), including skim and whole milk powder, whey for food use, cheese, dextrins and modified starches, barley, popcorn, oranges, soybeans for food use, dehydrated and table potatoes, honey, and hay. To increase the competitiveness of the domestic agricultural and livestock industries, in 2018 Korea voluntarily announced duty-free Most Favored Nation (MFN) TRQs for the feed grain complex, made up of 18 commodities including corn, soybean meal, barley, and oats.

Origin Verification

The United States has worked closely with Korea to resolve issues surrounding onerous verifications by the Korean Customs Service (KCS) for claims of preferential tariff treatment under KORUS and to ensure that U.S. exporters and producers receive the benefits provided for under KORUS. In the context of the 2018 KORUS amendment discussions, Korea agreed to specific systemic changes to its origin verification procedures. These commitments, confirmed through an exchange of letters, were accompanied by agreement to establish a new KORUS Rules of Origin Verification Working Group as an ongoing forum to address traders' concerns. USTR continues to hold discussions to ensure U.S. exporters do not face unreasonable verification challenges. In addition, 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals

The Act on the Registration and Evaluation of Chemicals (AREC, also known colloquially as K-REACH) entered into force on January 1, 2015. AREC requires manufacturers and importers of chemical substances to register and comply with annual reporting requirements. The United States has raised a number of concerns, centering on the lack of guidance around implementation, the insufficient time for companies to implement the requirements, and AREC's lack of protection for confidential business information. The United States has raised these concerns repeatedly through meetings under KORUS and the World Trade Organization (WTO) Committee on Technical Barriers to Trade (WTO TBT Committee).

A low volume exemption from AREC applies to companies importing under 100 kg; however, the Ministry of Environment (MOE) proposed changes to the Presidential Decree that would narrow application of low volume exemptions by requiring registration of compounds exceeding 1,000 kg imported country-wide on an aggregate basis. This newly proposed criterion introduces uncertainty to business planning and adds a further compliance burden on chemical importers.

In 2018, MOE proposed an amendment to another statute, the Chemical Control Act, which requires disclosure of the full composition of chemical mixtures by importers and manufacturers in line with its new "Universal Chemical Tracking System." However, U.S. exporters contend that full composition disclosure fails to protect confidential business information and compliance in declaring contents of third-party supplied materials would be difficult. If U.S. exporters cannot fulfill the requirements, exports to Korea will likely be restricted. The United States continues to urge Korean ministries to take a risk-based approach to regulations, using scientific evidence and risk assessments, and will engage Korean authorities as implementation progresses.

On November 6, 2018, the Republic of Korea notified four proposed technical regulations concerning biocidal products to the WTO TBT Committee. The Republic of Korea indicated in these notifications that interested parties only had 20 days to submit comments, rather than the 60 days WTO Members should normally allow under the WTO TBT Committee's recommendation.

The notifications also indicated that Republic of Korea would adopt these measures on January 1, 2019. This practice is inconsistent with the recommendation of the WTO TBT Committee that Members should normally provide an interval of more than six months between the publication of proposed technical regulations and their entry into force. The Republic of Korea's notifications did not specify why the 20 day

comment period and 55 day interval prior to entry into force were necessary. The notifications also provided no guidance on the approval process for active biocide agreement and biocidal product approval. U.S. industry did not have sufficient time to read and analyze these measures and was not able to provide public comment in advance of the deadline. Furthermore, the short adoption period was insufficient for U.S. chemical manufacturers to prepare to come into compliance with these measures, given supply chain commitments and long-term contracts.

Wood Products

In 2014, Korea's National Institute of Forest Service began publishing standards for 11 wood products with no provision for accepting North American standards widely used in the United States, Brazil, Canada, and Chile, which provide 75 percent of the Korean domestic consumption of these products. Although Korea has since accepted U.S. standards for structural plywood, the Korean standard for oriented strand board (OSB), which is based on an International Organization for Standardization (ISO) quality standard for less expensive decorative wood, does not include test procedures or analysis that would address engineering values appropriate for construction purposes. The United States continues to urge Korea to recognize the North American standard for structural OSB and to pass the Foreign Quality Inspection Institute (FQII) Act, which would allow U.S. conformity assessment bodies to become accredited in the Korean market. This would reduce costly duplicative testing and port delays. In 2018, the Korea Forest Service established parameters for recognizing a foreign inspection institute and agreed to the recognition of accredited agencies in the United States under the standards meeting the criteria for designation.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Korea's regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology crop varieties is onerous and protracted due to inefficiencies that include redundant reviews and data requests. For example, approval of agricultural biotechnology products requires review by up to five different agencies. Korea has indicated a willingness to continue discussing adjustments to its regulatory inefficiencies. The United States and private industry provided ideas on how to improve the process, and pilot projects were undertaken to test a streamlined process for biotechnology reviews. These initiatives have had little impact, however, as Korea's Living Modified Organisms Act mandates participation by five agencies, limiting the potential for improving the system without legislative changes. The United States will continue to engage with Korea on improving its approval process for agricultural biotechnology.

Beef and Beef Products

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing concerns related to bovine spongiform encephalopathy (BSE). 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 had to be derived from animals less than 30 months of age. This "transitional measure" remains in place over a decade later. In addition, processed beef products, including ground beef patties, beef jerky, and sausage are still prohibited for importation. In 2019, the United States exported over \$1.8 billion in beef to Korea, making Korea the second largest export market for U.S. beef by value and by volume.

Fruit

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. These include: expanding access for U.S. blueberries from U.S. states other than Oregon; improvement in the cherry export program; and access for apples, pears, and stone fruits. The United States has requested that MAFRA expedite the process for granting access for these products. The two governments discussed these issues during plant health bilateral meetings in 2019 between the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) and its counterpart agency in Korea, and during a meeting of the KORUS SPS Committee in November 2019. The United States will continue to press Korea to allow imports of these fruits from the United States.

Maximum Residue Limits

Korea's Ministry of Food and Drug Safety (MFDS) is shifting to a new positive list system (PLS) for agrochemical residues and veterinary drugs. Under the new system, Korea will no longer allow imports of food containing agrochemical residues unless the substance has been approved for the commodity in question, and a maximum residue limit (MRL) has been established. Korea implemented the PLS in December 2016 for tropical fruits, oilseeds, and tree nuts, and for all other plant products on January 1, 2019. Korea also plans to introduce a PLS for meat, poultry, and other animal products but has not yet determined a timeline.

Korea requires the establishment of new import tolerances for agrochemicals and veterinary drugs that previously had MRLs but were not registered for use in Korea, as well as for new substances that do not have any MRLs in Korea. In order to minimize disruption to trade, Korea delayed the elimination of existing MRLs for agrochemicals not registered for use in Korea until the end of 2021. Korea also created several thousand temporary MRLs that will be in effect until the MFDS completes its review or until the end of 2021. The United States will continue to work with Korea to ensure a smooth transition to the PLS.

SUBSIDIES

Industrial Subsidy Policy

Established under the Korea Development Bank Act of 1953, the Korea Development Bank (KDB) has been one of the government's main sources of policy-directed lending to favored local industries. Although the government of Korea began privatizing the KDB in 2009 as part of its reform of the financial sector, it subsequently decided that the KDB should be a policy lender to support small and medium-sized enterprises (SMEs) and strategic industries. In 2015, the government restored the KDB's role of providing public policy financial support to Korea's industries and companies.

The United States is concerned that the KDB may take action that distorts trade and investment. The KDB is a state-owned enterprise that provides government assistance to favored industries – support that could place foreign competitors at a disadvantage. The United States will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

GOVERNMENT PROCUREMENT

Korea is Party to the WTO Agreement on Government Procurement (GPA). Korea has made commitments to open its government procurement to U.S. suppliers under the revised WTO GPA and KORUS. KORUS provides U.S. suppliers significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services

than exists in the WTO GPA (\$100,000 versus the current GPA threshold, which is \$182,000). KORUS does not cover procurement by Korean sub-central government entities and government enterprises. The GPA, however, provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

Under the GPA, Korea applies a very high threshold for procurement of construction services by sub-central government entities and government enterprises (SDR 15,000,000 or approximately \$21 million). This threshold is three times higher than the threshold applied by the United States for similar entities. However, for central government procurements of construction services, Korea and the United States apply equivalent thresholds (SDR 5,000,000 or approximately \$7 million).

Furthermore, the Korean government has instituted a number of policies under the guise of promoting small and medium-sized enterprises (SMEs) that discriminate against U.S. multinationals. The Act on Facilitation of Purchase of Small and Medium Enterprise Manufactured Products and Support For Development of Their Markets categorizes companies by size, with multinationals frequently labeled as “large” (regardless of their actual size) simply by virtue of them being foreign-based or multinational, while local companies get categorized as “small” or “medium.” As such, “large” foreign companies are only able to bid on (the rare) projects larger than \$220,000, while most local companies can bid on the majority of projects available. This is particularly problematic for foreign-invested companies because, even if the size of their business is small, they are categorized as “large” due to their foreign ownership, and thus are deprived of the opportunities to participate in various bids. Similarly, the Software Industry Promotion Act restricts bids for certain government contracts for software services to “small and medium-sized” entities, again, leaving multinationals out of the government procurement process.

Encryption and Security Requirements for Public Procurement of Information and Communications Technology Equipment

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. However, the Korean government requires network equipment procured by government agencies to undergo additional verification in Korea by Korean government authorities, even if the products received CCRA certification outside Korea. Korea’s National Intelligence Service (NIS) has managed this process in a non-transparent fashion, without soliciting public comment, and has broadly construed these requirements to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders have raised concerns that Korea is expanding the scope of these requirements (including additional verification) to products not normally considered “security” products, such as routers, switches, and IP-PBXs. The United States has raised this issue with Korea in bilateral consultations and will continue to work with Korea in 2020, including within the CCRA, to address concerns.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by NIS. NIS certifies encryption modules based only on the Korean ARIA and SEED encryption algorithms, rather than the internationally standardized Advanced Encryption Standard algorithm 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.

Though Korea passed the Cloud Computing Promotion Act in 2015, significant barriers still exist to the adoption of public cloud services, especially those that are provided from offshore locations. In 2016, the Korea Internet and Security Agency created a cloud security certificate (KCSC) system governing public

sector cloud service procurement. The KCSC is a key barrier for U.S. cloud service providers (CSPs) in the Korean public sector market, as U.S. firms are unable to meet some components of the certification without creating a separate, Korea-unique, product. As a result, all central and local government ministries, affiliated public institutions, and educational institutions (from primary schools to universities) are prohibited from adopting cloud services offered by U.S. CSPs.

INTELLECTUAL PROPERTY PROTECTION

In general, Korea has a strong regime of intellectual property (IP) protection and enforcement. Under KORUS, Korea agreed to strong enforcement provisions for various types of IP rights and agreed to join key multilateral IP agreements. Moreover, the Korean government places importance on IP protection, and Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including in regards to: counterfeit transshipments, especially via small express-shipped parcels; geographical indications; collective rights management and statutory license fees for digital musical services; and a lack of deterrent-level civil and criminal penalties for IP violations. The United States continues to work with Korea to seek improvements in these areas.

SERVICES BARRIERS

Audiovisual Services

In Korea, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time, determined on a semi-annual basis. Within those overall quotas, Korea maintains annual quotas that further limit broadcast time for foreign films to 75 percent of all films for terrestrial broadcasts and 80 percent for cable and satellite broadcasts. Foreign animation is limited to 55 percent of all animation content for terrestrial broadcast and 70 percent of all animation content for cable and satellite broadcasts. Foreign-produced popular music is limited to 40 percent of all broadcast music content. Another semi-annual quota limits content from any one country to 80 percent of the quota available to foreign films, animation, or music. KORUS protects against increases in the amount of domestic content required and ensures that new platforms, such as online video and streaming music, are not subject to these legacy restrictions.

Korea maintains a screen quota for films, requiring that any movie screen show domestic films at least 73 days per year.

The Broadcasting Act contains restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. stakeholders, as they diminish the value of such channels in the Korean market.

Financial Services and Insurance Services

To implement its commitments related to the transfer of information under KORUS and the Korea–European Union Free Trade Agreement, Korea adopted new regulations in 2013 governing the outsourcing of data and information technology (IT) facilities to allow financial institutions located in Korea to transfer data to affiliates outside Korea and to allow certain data processing and other functions to be performed by affiliates outside Korea. Stakeholders raised concerns about strict new rules and enhanced penalties governing data privacy under the May 2014 Act on Promotion of Information and Communications Network Utilization and Information Protection. In June 2015, the Financial Services Commission (FSC), taking into consideration most industry concerns, revised its Regulations on Financial Institutions’ Outsourcing of Data Processing Business and IT Facilities to: eliminate the approval process for the outsourcing of IT facilities; lift the restrictions on third-party outsourcing or re-outsourcing; establish a

broader application of ex post facto reporting requirements to processing consumer or corporate transaction data; and abolish the Financial Supervisory Service (FSS) security review in the application process. Some difficulties remain given substantial consent requirements, such as consent for the specific data to be transferred and the specific purpose for the transfer. This is true in particular for the reinsurance industry, where challenges remain in utilizing cross-border transfer of data in the normal course of business, based on narrow interpretations of consent requirements which seem inappropriate given the overall use of reinsurance as a general tool used to mitigate risk and ensure consumer protection. The United States continues to urge Korea to resolve this issue and continues to monitor Korea's overall implementation of its FTA commitments in financial services, including with respect to data transfer.

Responding to industry requests, the FSC announced the Plan for Expansion of Cloud Usage in the Financial Sector on July 16, 2018. According to the Plan, the FSC intended to revise some provisions in the Regulations on Supervision of Electronic Finance and the Data Protection Standards for Cloud Computing Services (so-called CCPA Guidelines) by the end of 2018. However, the amendments remain under discussion in draft form. The FSC says the purpose of the amendments is to allow all financial companies and technology firms' cloud usage to develop new products and services with regard to all types of information, including personal credit and personally identifiable information. While U.S. industry welcomed the move by FSC to expand the use of cloud computing services, they raised concerns over restrictions on the use of overseas cloud facilities due to Korea-specific data localization requirements, ambiguous standards for data protection, and overly burdensome monitoring and investigation on cloud service providers. In addition to limiting the flexibility of foreign financial service suppliers, such policies significantly limit commercial opportunities for U.S. data processing firms, particularly when seeking to offer such services on a cross-border basis. The United States will continue to engage with Korea on these important issues.

Franchising Services

U.S. stakeholders have raised concerns for several years about the activities of the National Commission on Corporate Partnership, now renamed the Korea Commission for Corporate Partnership (KCCP), which imposes 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," which would in effect exclude U.S. businesses from participation.

In 2013, the KCCP designated the family restaurant sector as reserved for SMEs. This imposed restrictions that affected U.S. franchising companies in the sector, by forcing them to choose between significant geographic restrictions on the opening of new stores, or accepting a limit of only five new stores a year nationwide for the next three years. In 2014, the KCCP also opened proceedings looking into U.S.-based restaurant chains and systems integration businesses, potentially affecting significant U.S. investors in Korea. The United States has raised concerns about the KCCP's activities and has urged Korea to consider carefully the effect that the KCCP has on Korea's business climate and on foreign investors. In 2015 and 2016, the KCCP had reserved 73 sectors for SMEs; 26 sectors are still on the protection list, while the protection period for 47 sectors expired at the end of June 2018. However, this protection list has not affected U.S. companies. The National Assembly passed another protection law for "mom and pop" stores, the Special Act for Designating Suitable for Micro-businesses, which took effect on December 13, 2018. The United States will continue to monitor KCCP's activities and related laws closely in 2020 and raise concerns where they arise.

Professional Services

Over the past seven years, Korea has taken steps to open its legal services market as outlined in KORUS. The first step involved creating a legal status for foreign legal consultants and allowing foreign law firms to open foreign legal consultant (FLC) offices in Korea. The Foreign Legal Consultants Act allowed foreign attorneys with a minimum of three years of work experience to provide consulting services on the law of the jurisdiction in which they are licensed. The second stage, implemented as of March 15, 2014, allowed FLC offices to enter into “cooperative agreements” with Korean firms to be able to jointly deal with cases where domestic and foreign legal issues are mixed. The third stage, implemented March 15, 2017, allowed foreign licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

However, this third stage, which was implemented through amendments to the Foreign Legal Consultants Act, contains several requirements that are unique to Korea that discourage U.S. companies from starting joint ventures. The Act limits a foreign law firm’s ownership of the joint venture to 49 percent and requires the firms composing the joint venture to have been in operation for three years. In addition, it limits the scope of practice of joint ventures. Although the bill allows foreign law firms to operate joint ventures in Korea for the first time, these provisions undermine the legislation’s purpose of facilitating trade in legal services between the two countries. The United States continues to urge Korea to review its overall approach to opening the legal services market.

Telecommunications Services

Korea prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end-users without going through a company established in Korea. Given current investment restrictions and the fact that establishing a local presence may not be economically justified, this prohibition significantly restricts the ability of foreign satellite service suppliers to compete in the Korean market. The United States will continue to raise this issue with Korea in 2020.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

Cross-Border Transfer of Data

Korea’s restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside of Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against their Korean rivals, since their locally based competitors typically are not dependent on foreign data processing centers. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data.

While there is no general legal prohibition on exporting location-based data, exporting such data requires a license. To date, Korea has never approved a license to export cartographic or other location-based data, despite numerous applications by foreign suppliers over the past decade. 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 is often available 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 Korea's restriction on exporting location-based data is a separate issue, and will continue to consult with Korea on addressing this market access barrier in the mapping service market.

The 2011 Personal Information Protection Act imposed stringent requirements on service providers seeking to transfer customer data outside Korea. The law requires data exporters to provide customers with extensive information about the data transfer, including the destination of the data, any third party's planned use for the data, and the duration of retention. For data transferred to third parties within Korea, less stringent requirements apply. These restrictions pose barriers to the cross-border provision of Internet-based services that depend on data storage and processing services, provided by a company directly or through third parties, and effectively privilege Korean over foreign suppliers in any data-intensive sector without materially contributing to effective privacy protection.

In April 2016, Korea amended its IT Network Use and Protection Act, which imposes stringent protections on the personal data collected and handled by telecommunications and online service providers. The amendments impose significant penalties for violating data protection standards, including heavy fines for telecommunications and online service providers that transfer personal data cross border without consent. Failure to obtain consent results in a fine of up to three percent of the revenue related to the transfer. As with the 2011 Personal Information Protection Act, such requirements appear to discriminate against any suppliers reliant on foreign data storage and processing, and thus raises significant trade concerns. Both of these acts demonstrate a lack of reasonable alternatives to a rigidly implemented policy on consent. This has resulted in Korea being an outlier with respect to privacy policy, a status that could handicap its digital development.

A specific concern of the financial services and insurance industries related to commitments on transfer of data in KORUS and the Korea-European Union Free Trade Agreement is noted above under "Financial Services and Insurance."

Facilities Localization

Korea maintains facilities localization requirements with respect to payment gateway services, preventing suppliers from leveraging investments in facilities located outside Korea. While ostensibly designed to ensure that payment data remains in Korea for privacy purposes, such a requirement may not enhance privacy protection and is at odds with evolving technologies and services, which increasingly rely on globalized networks.

Electronic Commerce Policies

Under the Regulation on Supervision of Credit-Specialized Financial Business, electronic commerce firms operating on a cross-border basis have been prevented from either selling in Korean won or storing domestic consumers' credit card information unless they have registered in Korea as a Payment Gateway (PG) supplier or use a local PG company service for won-denominated transactions. In the absence of a PG registration (which requires firms to develop Korea-specific payment systems and customer interfaces, and to have a local presence in Korea), foreign electronic commerce sites can only process dollar-denominated transactions for which customers enter their credit card information anew each time, which puts them at a competitive disadvantage as compared to local merchants. This restriction thus effectively prevents the full offering of cross-border distribution services into Korea, since local currency payments are integral to any comprehensive distribution service.

U.S. enterprises have also expressed concerns with respect to requirements regarding value-added tax payments for certain transactions conducted in Korea. The United States will continue to monitor this issue closely.

INVESTMENT BARRIERS

U.S. investors have on occasion raised concerns about possible discrimination and lack of transparency in investment-related regulatory decisions in Korea, including decisions by tax authorities.

Foreign investment is not permitted in terrestrial broadcast TV operations. For both cable and satellite broadcasting services, foreign participation is limited to 49 percent. Since March 15, 2015, Korea has permitted U.S. investors to hold up to 100 percent of the equity interest in a program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable/satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in telecommunications and key services sectors, Korea maintains other restrictions on foreign investment, including a prohibition on foreign investment in rice and barley farming, and a 50 percent foreign equity limitation for enterprises engaged in meat wholesaling; electric power generation, distribution, and sales; and publishing of periodicals other than newspapers. Electronic power generation and enterprises publishing daily newspapers are subject to a 30 percent foreign equity limitation. News agencies are subject to a 25 percent foreign equity limitation.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has a broad mandate that includes promoting competition, strengthening consumers' rights, creating a competitive environment for SMEs, and restraining the concentration of economic power. In addition to its authority to conduct investigations, including authority over corporate and financial restructuring, KFTC can levy sizeable administrative fines for legal violations as well as for failure to cooperate with investigators. Decisions by KFTC are appealable to the Korean court system. As part of KORUS implementation, KFTC instituted a consent decree process in 2014, which it continues to refine.

A number of U.S. firms have raised concerns that KFTC has targeted foreign companies with disproportionate enforcement efforts (e.g., not basing remedies on the conduct involved). U.S. firms have also expressed concerns under KORUS with KFTC's procedures and practices because KFTC denies companies the opportunity to adequately defend themselves during investigatory proceedings and hearings. The United States has had extensive discussions with Korea regarding the right of companies to reasonably access and rebut evidence used to determine companies have violated Korea's competition laws.

In December 2018, Korea proposed a significant amendment of the Monopoly Regulation and Fair Trade Act to its National Assembly. The proposed amendments do not, however, appear to meaningfully improve the right of investigated companies to gain access to evidence forming the basis of determinations against them. As a result, on March 15, 2019, the United States requested the first ever consultations with Korea under the Competition Chapter of KORUS. The United States will continue to engage with Korea in 2020 to address and resolve this important issue.

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States. As one of the outcomes related to the 2018 KORUS amendment negotiations, Korea committed to complete the harmonization of its emission requirements and testing standards for gasoline engine vehicles with EPA requirements and standards, thereby allowing vehicles exported to Korea to show compliance with Korea's gasoline emissions standards using the same tests they conduct to show compliance in the United States. U.S. automobile exports to Korea increased by over 360 percent from 2011 to 2019, from \$419 million in 2011 to \$1.9 billion in 2019.

Korea is currently developing the regulations for the next tranche of its CO₂/CAFE targets, which will cover the years 2021 to 2030. U.S.-owned automobile manufacturers have voiced consistent concerns that these regulations will be unreasonably onerous for their products, in particular due to the divergence between Korea's CO₂/CAFE requirements and the corresponding U.S. requirements. During the negotiations that led to the January 2019 KORUS amendments, Korea agreed to take global trends into consideration and maintain more lenient requirements for small volume manufacturers in these forthcoming implementing regulations for the 2021 to 2030 CO₂/CAFE targets.

In addition to the CO₂/CAFE regulations, in March 2019, the National Assembly passed into law a Low Emission Vehicle (LEV)/Zero-Emission Vehicle (ZEV) mandate, which would require a certain percentage of a manufacturer's Korean fleet to be comprised of ZEVs and LEVs. According to the legislation, the mandate must enter into force in 2020, with enforcement beginning in 2021 (based on the fleets sold by manufacturers in 2020). A draft implementing regulation was published for public comment in December 2019 that proposed a target fleet percentage at 17 percent for LEVs, but did not include penalties for non-compliance. Implementing regulations to build out the system are expected to be released during 2020. U.S.-owned automobile manufacturers have expressed serious concerns with the mandate. Meanwhile, U.S. electric vehicle manufacturers have raised concerns that Korea might not allow credit trading for small volume manufacturers under the LEV/ZEV regulations, depriving them of the ability to sell credits to companies not reaching the required fleet average.

Industry has also raised concerns about the Emission Related Components (ERC) modifications and enforcement actions taken against vehicle manufacturers by Korean regulatory bodies in connection with alleged failure to comply with ERC certifications. Under Korea's Clean Air Conservation Act, vehicle manufacturers and importers are required to obtain MOE modification certifications or prepare modification reports even for unimportant changes. The automobile industry has expressed concern about ambiguity between certification and reporting. Industry contends both requirements are burdensome because import documentation must reflect all changes made by component suppliers before a vehicle arrives in Korea. Automakers also have noted that violations with respect to imports could be subject to criminal investigation by Korean Customs authorities, which lack authority to investigate domestically manufactured vehicles. Automobile importers have called for MOE to revise the regulations to eliminate these trade barriers.

The U.S. Government will follow these issues very closely to ensure the increased access of U.S. vehicles to Korea's market obtained pursuant to KORUS is not nullified or impaired by these policies.

Pharmaceuticals and Medical Devices

The United States continues to urge Korea to ensure that pharmaceutical reimbursement is conducted in a fair, transparent, and nondiscriminatory manner that recognizes the value of innovation. Nevertheless, the

U.S. innovative pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency and predictability regarding Korea's pricing and reimbursement policies, as well as Korea's underlying methodology for determining reimbursement rates.

On July 7, 2016, Korea enacted provisions for innovative pharmaceutical companies to apply for "premium pricing" for innovative products, although criteria under the program raised serious concerns of discrimination that favored domestic pharmaceutical companies. As one of the outcomes of the 2018 KORUS amendment negotiations, Korea agreed to revise the program to remove discriminatory criteria and bring the program into compliance with Korea's obligations under KORUS. Although amendments made in December 2018 removed discriminatory elements of Korea's premium pricing system, the revisions to the program's criteria by the Ministry of Health and Welfare (MOHW) also substantially narrowed the program's scope in a manner that may dramatically limit the ability of any company, foreign or domestic, to qualify for premium pricing. The United States has urged Korea to make further strides to abide by its KORUS commitment to appropriately recognize the value of patented pharmaceutical products.

Stakeholders in the U.S. medical devices sector also have specific concerns about the pricing and reimbursement system, including insufficient transparency, a lack of meaningful input into product valuation decisions, reimbursement decisions that do not appropriately value innovation, and delays in market approval. The United States continues to urge Korea to address these and other issues, as well as to engage meaningfully with industry and improve transparency.

KUWAIT

TRADE SUMMARY

The U.S. goods trade surplus with Kuwait was \$1.8 billion in 2019, a 96.1 percent increase (\$860 million) over 2018. U.S. goods exports to Kuwait were \$3.2 billion, up 6.4 percent (\$190 million) from the previous year. Corresponding U.S. imports from Kuwait were \$1.4 billion, down 32.1 percent. Kuwait was the United States' 53rd largest goods export market in 2019.

Sales of services in Kuwait by majority U.S.-owned affiliates were \$804 million in 2017 (latest data available), while sales of services in the United States by majority Kuwait-owned firms were \$622 million.

U.S. foreign direct investment (FDI) in Kuwait (stock) was \$313 million in 2018, a 5.7 percent increase from 2017.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Kuwait's exceptions include 417 food, agricultural, and pharmaceutical items that are exempt from customs duties. Kuwait has bound 99.9 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 97.9 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—remain exempt from the tax. Kuwait introduced supporting legislation in the National Assembly in 2018, where it remains under debate.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State. Kuwait introduced VAT legislation in the National Assembly, but action on the legislation has been delayed.

Nontariff Barriers

Import Bans and Import Licensing

Kuwait maintains a non-automatic import licensing regime for a wide variety of products, ranging from plant products to products of the chemical and allied industries, to ensure that imports are compliant with various laws and regulations. Importers must be citizens of Kuwait or be Kuwaiti-based brokers and are required to register with the Ministry of Commerce and Industry. Import license applications must include a standard application form, certificate from the chamber of commerce, copy of invoices, and certificates

of origin (if necessary). There are no fees associated with the application. If approved, licenses are valid for one year.

In addition to licensing requirements, Kuwait also prohibits the importation of alcohol, pork products, used medical equipment, automobiles more than five years old, books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

All imported meat requires a health certificate issued by the country of export and a halal food certificate issued by an approved Islamic center in that country.

Customs Barriers and Trade Facilitation

Kuwait ratified the WTO Trade Facilitation Agreement (TFA) in April 2018, which commits WTO Members to implement specific customs reforms that streamline the clearance of goods. The TFA uniquely allows developing-country Members to self-designate the implementation date of each commitment and any technical assistance required, as long as it does so by prescribed deadlines. Kuwait was due to submit these categorizations by August 2019, but failed to do so.

Kuwait notified its customs valuation legislation to the WTO in December 2017, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Halal Regulations

Since 2017, U.S. exporters have been experiencing rejection of U.S. halal-certified processed beef and turkey shipments based on trace levels of pork found in laboratory testing, as alleged by the Kuwait Ministry of Health. However, U.S. exporters conduct regular DNA tests for such consignments at U.S.-certified labs prior to export to Kuwait. While DNA tests in the United States consistently detected no pork content, these findings were neither accepted nor taken into consideration by the Government of Kuwait. Rejections as a result of tests for pork content have caused considerable economic losses for both U.S. meat suppliers as well as local Kuwaiti importers.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including

labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

GOVERNMENT PROCUREMENT

Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately \$250,000) be conducted through the Central Agency for Public Tenders with the exception of Kuwait Petroleum Corporation contracts up to KD 5 million (approximately \$16.5 million). Ministry of Interior, Defense, and National Guard contracts are also exempted. Kuwait provides a 15 percent price preference for domestic and GCC goods, requires foreign contractors to purchase at least 30 percent of their inputs domestically, and to award at least 30 percent of the work to domestic contractors where available.

The process that manufacturers must undertake to pre-qualify new technologies by the government is lengthy, burdensome, and lacks transparency.

Kuwait is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

In 2019, Kuwait remained on the Special 301 Priority Watch List in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. Kuwait passed a new Copyright and Related Rights Law in June 2019 with corresponding implementing regulations published in September 2019. The new law and regulations address some concerns regarding copyright protection and enforcement in Kuwait.

Kuwait demonstrated improvements in its IP enforcement by increasing the number of in-market and customs seizures of counterfeit and pirated goods, but efforts to regularize enforcement operations are still needed. Publishing predictable and transparent IP enforcement procedures will help in this regard. The United States continues to encourage the government to devote additional resources and to take deterrent-level actions that would have the effect of curbing the distribution and sale of counterfeit and pirated goods.

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

SERVICES BARRIERS

Financial Services

Foreign banks were granted licenses to operate in Kuwait under the 2001 Direct Foreign Capital Investment Law. In 2008, the Union of Kuwaiti Banks renamed itself the Kuwait Banking Association and reorganized its membership structure to include all foreign banks operating in Kuwait, which provided foreign banks additional market access via membership in a specialized industry association. Foreign banks are subject to a maximum credit concentration equivalent to 20 times the amount allocated for the branch's operations and are expressly prohibited from directing clients to borrow from their offshore branches or taking any other measures to facilitate such borrowing.

Telecommunications Services

Although Kuwait's telecommunications industry is technically open to private investment, in practice the government maintains extensive ownership in the sector and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content with little judicial oversight.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment is not allowed in projects involving oil and gas exploration and production. Although Kuwait allows foreign firms to participate in some midstream and downstream activities in the oil and gas sector, investors in this sector have faced numerous challenges.

The Ministry of Commerce and Industry and the Kuwait Direct Investment Promotion Authority (KDIPA) have been working to streamline the process for foreign investors to obtain commercial and investment licenses, improve regulatory transparency, raise awareness of the importance of foreign investment, resolve commercial disputes that foreign companies have with the government, and improve the country's overall investment climate. KDIPA also provides a legal avenue whereby a foreign corporation may establish a wholly-owned foreign enterprise in Kuwait. Notwithstanding these efforts, major barriers to foreign investment persist. These include: regulations prohibiting foreigners from investing in real estate and publishing; long delays associated with starting new enterprises; difficulty in identifying a required local sponsor and agent; and obstacles created by a business culture heavily influenced by clan and family relationships.

LAOS

TRADE SUMMARY

The U.S. goods trade deficit with Laos was \$131 million in 2019, a 4.2 percent increase (\$5 million) over 2018. U.S. goods exports to Laos were \$17 million, up 6.7 percent (\$1 million) from the previous year. Corresponding U.S. imports from Laos were \$148 million, up 4.5 percent. Laos was the United States' 195th largest goods export market in 2019.

TRADE AGREEMENTS

Laos is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Laos, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Laos' average Most Favored Nation (MFN) applied tariff rate was 8.5 percent in 2018 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.1 percent for non-agricultural products in 2018.

Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), and its average WTO bound MFN tariff rate will be 19.0 percent when all of its WTO accession commitments come into force in 2023. By contrast, almost all imports from ASEAN member states currently benefit from substantial tariff concessions, with tariff rates of five percent or less.

Taxes

Laos has been implementing a value-added tax (VAT) system since 2010. The standard VAT rate of 10 percent applies to most domestic and imported goods and services, with some limited exemptions. However, uniform implementation of the VAT has been slow, and problems related to VAT payments and refunds are a top concern of the foreign business community in Laos. Laos also has begun to implement excise taxes on some goods, such as vehicles and vehicle fuels, apparently to make up for revenue lost from tariffs reduced under the WTO and ASEAN agreements. U.S. and other foreign businesses have raised concerns to the U.S. and Laos governments about duplicative, arbitrary, or selectively enforced tax provisions.

Nontariff Barriers

Import Licensing and Restrictions

Certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, and timber products, are subject to import licensing. Laos is currently in the advanced stages of updating its import licensing requirements and is expected to notify relevant WTO committees by the end of 2020.

Customs Barriers and Trade Facilitation

Laos notified its customs valuation legislation in 2013 to the WTO, but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

While U.S. exporters still raise concerns about irregularities and corruption in the customs clearance process, the government is making efforts to improve and modernize customs procedures. Laos' new digital payment system for importers, called "Smart Tax," is an electronic payments mechanism that has a direct link to the national treasury. In addition, Laos expanded automated customs processing under the Automated System for Customs Data (ASYCUDA) system to cover more than 90 percent of the country's cross border trade. Laos' customs authority has also introduced a risk management-based approach to the inspection process. The average customs clearance time was reduced from 9 hours and 7 minutes in 2017 to 8 hours and 10 minutes in 2019.

INTELLECTUAL PROPERTY PROTECTION

With U.S. Government assistance, Laos continues to work to establish an effective system for civil and criminal enforcement of intellectual property (IP). While Laos made improvements to its Law on Intellectual Property in recent years and continues working to increase public awareness and media coverage 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.

The United States will continue to engage with Laos under the bilateral Trade and Investment Framework Agreement and other dialogues to urge Laos to take steps to improve IP protection and enforcement, including through joining international IP agreements, developing judicial capacity to adjudicate IP cases, and further increasing public awareness of the importance of IP.

SERVICES BARRIERS

Foreign services suppliers continue to face difficulties in many service sectors in Laos, including financial, medical, postal, and telecommunications services, as well as some leasing, media, and transportation services. Laos opened most other service sectors to U.S. service suppliers through the United States–Laos Bilateral Trade Agreement.

Financial Services

In November 2017, the National Assembly passed the Law on National Payments. The law establishes a new Payment Systems Department in the Bank of the Lao PDR that is responsible for developing a series of decrees to regulate and reform payment systems in Laos, including the possible establishment of a national electronic payments gateway. Bank of Lao PDR (BoL) issued the Decision on Retail Payment Systems No. 293/BoL in April 2019, which imposed licensing and reporting requirements on retail electronic payment providers. The Laos government has indicated plans to draft an additional decision that would set criteria and conditions for payment services supplied in Laos, including on a cross-border basis. To establish a national electronic payments gateway, BoL signed a memorandum of understanding with the Lao National Payment Network Company Ltd (LAPNet), a company co-owned and invested in by nine banks in Laos, to create a more efficient system of payments within the company's banking system. It is unclear whether, or to what extent, these changes will affect cross-border financial services. The U.S. Government continues to closely monitor Laos' development of regulations in the area of electronic payments, with a view towards ensuring that the measures adopted facilitate competition and a level playing field for U.S. electronic payment service suppliers.

Telecommunications Services

No U.S. telecommunications providers are active in Laos, which is due in part to Laos being a saturated market with five telecommunications providers, the small size of the market, and government-set price controls for telecommunication services that limit free competition.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to concerns about corruption, difficulties in enforcing contracts, an underdeveloped judicial system, overlapping and often contradictory regulations, and limited access to financial services. Domestic ownership and partnership requirements vary by industry and administrative processes are often inconsistent or inefficient. The Laos government requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, taxes are often assessed in an unpredictable manner. In February 2018, Prime Minister Thongloun Sisoulith issued an order laying out specific steps for various ministries to take in order to improve the business environment, some of which have resulted in measurable improvements including decreasing the time required to obtain a business license. Nonetheless, broad reforms aimed at improving the business environment have been largely unsuccessful.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Decree 327 on Information Management on the Internet of 2014 creates legal challenges for U.S. Internet services suppliers operating in Laos. Under the decree, “website managers” may be required to actively monitor content posted to their site and may be held legally liable for content on their site, even if that content was created by a third party. For websites that depend on user-generated content, such as social networks, customer review sites, and online forums, this decree creates legal exposure and uncertainty.

OTHER BARRIERS

Bribery and Corruption

Corruption remains a barrier for U.S. businesses seeking to operate in or trade with Laos. However, the current government leadership has made anticorruption efforts a priority. Laos has taken steps to improve transparency in its domestic lawmaking process, including with the opening of the Ministry of Justice Electronic Official Gazette in 2013. In accordance with the 2012 Law on Making Legislation, drafts of all new laws and regulations must be published on the Gazette for at least 60 days. In 2018, with the support of the United States, the Laos government released a “Lao Law” smart phone app, which allows the public to download a free application that accesses all the laws and regulations found on the Ministry of Justice’s Electronic Official Gazette. This development offers investors, entrepreneurs, and the public a more accessible and user-friendly platform for learning about Lao law. However, not all government agencies publish their laws and regulations online, and there remain limited opportunities for shaping draft legislation.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was \$27.4 billion in 2019, a 4.2 percent increase (\$1.1 billion) over 2018. U.S. goods exports to Malaysia were \$13.1 billion, up 0.8 percent (\$108 million) from the previous year. Corresponding U.S. imports from Malaysia were \$40.6 billion, up 3.1 percent. Malaysia was the United States' 26th largest goods export market in 2019.

U.S. exports of services to Malaysia were an estimated \$3.5 billion in 2018 (latest data available) and U.S. imports were \$2.0 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were \$7.4 billion in 2017 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were \$544 million.

U.S. foreign direct investment (FDI) in Malaysia (stock) was \$13.6 billion in 2018, a 9.9 percent decrease from 2017. U.S. direct investment in Malaysia is led by manufacturing, nonbank holding companies, and finance and insurance.

TRADE AGREEMENTS

Malaysia is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Malaysia, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. In March 2018, Malaysia also signed the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, but had yet to ratify the agreement as of 2019. Malaysia suspended its free trade agreement negotiations with the European Union in 2018.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Malaysia's average Most Favored Nation (MFN) applied tariff rate was 5.6 percent in 2018 (latest data available). Malaysia's average MFN applied tariff rate was 7.9 percent for agricultural products and 5.3 percent for non-agricultural products in 2018 (latest data available). Malaysia has bound 84.3 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 21 percent. Malaysia's WTO bound tariff rate averages 54 percent for agricultural products and 14.9 percent for non-agricultural products. Malaysia's maximum WTO bound tariff rate varies significantly by product group, for example, from 288 percent for dairy products to 5 percent for petroleum.

Almost all of Malaysia's tariffs are imposed on an *ad valorem* basis. 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 pork, chilled and frozen poultry, milk, rice, and multiple fruits and vegetables. These products face in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as 40 percent to 168 percent.

Taxes

Despite amendments to its excise tax regime for alcoholic beverages in 2016, Malaysia continues to assess a lower excise tax on domestic distilled spirits than on imported products as of 2019. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size. Domestic automobile producers are given credit for local content in excise tax valuation, which disadvantages imports of automobiles and automotive parts in the Malaysian market.

Nontariff Barriers

Import Licensing

A large number of products related to import-sensitive or strategic industries, principally in the steel, construction equipment, agricultural, mineral, and motor vehicle sectors, are subject to non-automatic import licensing requirements.

Customs Barriers and Trade Facilitation

Malaysia ratified the WTO Trade Facilitation Agreement (TFA) on May 26, 2015. Malaysia is overdue to submit to the WTO four transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) details of operation of the single window (Article 10.4.3); (3) the use of customs brokers (Article 10.6.2); and (4) customs contact points for the exchange of information (12.2.2). These notifications were due to the WTO on February 22, 2017, according to Malaysia's self-designated WTO TFA implementation schedule.

Import Restrictions on Motor Vehicles

Malaysia imposes import restrictions on automobiles under the Malaysian National Automotive Policy (NAP), which makes a fundamental distinction between "national" cars (e.g., domestic automakers Proton and Perodua) and "non-national" cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of "approved permits" (APs) confers on permit holders the right to import and distribute cars and motorcycles. The AP system is administered in a non-transparent manner and effectively operates as a cap on the total number of vehicles that can be imported in a given year. The cap on imported vehicles is set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector and has traffic restrictions and noise standards that affect the usage of large motorcycles.

In 2018, the Malaysian government announced plans to establish a new national automobile in production by 2022. In August 2019, the Malaysian government revealed that a Malaysian engineering company had been selected to design and build the new national car, which is expected to be an advanced technology model. Additionally, the Malaysian government announced a new NAP in 2020 that focuses on domestic production of advanced technology vehicles. The 2020 NAP appears to include incentives and subsidies for domestic manufacturers, which could further limit market access for imported automobiles.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Regulations – Meat and Poultry Products

Malaysia's food product standard, MS1500:2009, which establishes guidelines on halal food production, preparation, handling, and storage, imposes requirements beyond those reflected in internationally-recognized halal standards contained in the Codex Alimentarius Commission (Codex). Specifically, the Malaysian standard requires slaughter plants to maintain dedicated halal production facilities and to ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, Codex allows for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. All domestic and foreign meat (except pork) must be certified as halal by the Malaysian authorities or a Foreign Halal Certification Body (FHCB). The halal practices of foreign producers must be inspected plant-by-plant and approved for conformity with Malaysian standards before being permitted to export to Malaysia.

As of early 2020, Malaysia's Department of Veterinary Services, in conjunction with Malaysia's Department of Islamic Development (JAKIM), has approved only one U.S. beef plant and one U.S. poultry (turkey) plant for export of halal products to Malaysia.

The United States continues to discuss the approval of U.S. halal-certifying bodies. The number of U.S. Islamic authorities approved by Malaysia's JAKIM as FHCBs increased from two to three in October 2019. Two other new U.S. applicants were rejected following JAKIM's audit in August 2019.

Halal Regulations - Medical Devices

In July 2019, the Malaysian Ministry of International Trade and Industry (MITI) approved a standard for halal medical devices (JSM17/ISC/I-01RO), which was first proposed by Standards Malaysia in 2017. The standard's effective date of implementation is unclear pending the adoption of implementation guidelines. Compliance with the standard will be deemed voluntary. The scope of the halal medical device standard is limited to devices with "human contact," although it does not differentiate between devices, which contain animal matter, and the vast majority of them, which do not. The Malaysian government has committed to an additional industry stakeholder meeting. Industry stakeholders are concerned that any voluntary compliance with the standard may result in burdensome and costly inspections, which would likely disadvantage U.S. exporters. Industry stakeholders have also expressed concern that Malaysian authorities will make procurement decisions based on compliance with the new standard.

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 commonly exported products. As of March 2020, the Malaysian Ministry of Health was not enforcing the amendments.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Malaysia requires mandatory labeling of food and food ingredients with genetically engineered (GE) content above three percent but has not enforced this regulation. As of February 2020, Malaysia has approved 40 agricultural biotechnology products for market release for use in food, feed, and processing (4 for cotton, 1 for canola, 1 for rapeseed oil, 18 for corn, 2 for potatoes, and 14 for soybeans).

SUBSIDIES

Export Subsidies

Malaysia maintains several programs that appear to provide subsidies for exports, distinct from the pioneer status and investment tax allowance programs previously listed in Malaysia's subsidies notifications to the WTO. For example, the NAP provides an income tax exemption for high value-added exports of motor vehicles and parts based on the percentage increase in the value added of exports. Moreover, there appear to be a number of other subsidy programs providing tax benefits based on export performance, such as the Income Tax Exemption Based on the Value of Increased Exports and the Deduction for the Promotion of Exports programs, which Malaysia has not addressed in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies through the WTO Subsidies Committee and the WTO Trade Policy Review Body. While Malaysia has promised to make a greater effort to notify all of its subsidy programs, its responses to questions remain incomplete.

GOVERNMENT PROCUREMENT

Malaysia has traditionally used government procurement contracts to support national public policy objectives, including encouraging greater participation of Bumiputera (the majority Malay ethnic group) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. As a result, it has generally invited international tenders only when domestic goods and services are not available, and in those cases, foreign companies often find they need to take on a local, Bumiputera-qualified partner before their tenders will be considered.

Malaysia is not a Party to the WTO Agreement on Government Procurement, but has been an observer of the WTO Committee on Government Procurement since July 2012.

INTELLECTUAL PROPERTY PROTECTION

In recent years, Malaysia has taken steps to enhance its intellectual property (IP) enforcement regime. However, concerns remain in a number of areas. Pirated and counterfeit goods are widely available, highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur in the Out-of-Cycle Review of Notorious Markets. Other concerns include unauthorized camcording sourced to Malaysian cinemas, online and book piracy, and issues related to pharmaceutical patents. The United States has also urged Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation. In April 2019, the United States extended the Special 301 Out-of-Cycle Review for consideration of the extent to which Malaysia is providing adequate and effective IP rights protection and enforcement, including with respect to patents.

Malaysia is in the process of updating its IP laws, including its trademark and patent laws. Malaysia acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in 2019.

SERVICES BARRIERS

Audiovisual Services

Foreign investment in cable and satellite platforms is permitted through joint ventures, with foreign equity capped at 30 percent, but there are no foreign direct investment restrictions on the wholesale supply of pay television programming. Malaysia prohibits foreign investment in terrestrial broadcast networks.

Distribution Services

Malaysia allows 100 percent foreign ownership of department and specialty stores. However, larger foreign-owned retailers (“hypermarkets”) and locally incorporated direct selling companies must still have 30 percent Bumiputera equity. Malaysia also requires department stores, supermarkets, and hypermarkets to reserve at least 30 percent of shelf space for goods and products manufactured by Bumiputera-owned small and medium-sized enterprises. To support development of the online retail or electronic commerce sector, Malaysia allows 100 percent foreign equity participation in courier services.

Financial Services

The Financial Services Act of 2013 removed the previous foreign equity limit of 70 percent for domestic banks, investment banks, insurance companies, Islamic banks, Islamic investment banks, and Islamic insurance companies. Under the Act, Bank Negara Malaysia (Malaysia’s Central Bank) evaluates potential investments in these types of financial institutions based on whether the investment serves the “best interests of Malaysia.” As of early 2020, Bank Negara Malaysia had not released specific criteria for foreign investment in financial institutions to qualify under this test.

Even after the Financial Services Act of 2013 was enacted, however, some companies still have been required to reduce foreign equity to 70 percent to remain in the Malaysian market. Bank Negara Malaysia has stated that it intends to be “flexible” as to how companies reduce their foreign ownership stake, and some sources indicate that a greater than 70 percent stake may be allowed, provided that the foreign owner undertakes commitments to assist underserved or poor populations in Malaysia. The United States continues to raise concerns with Malaysia about foreign equity caps and other investment restrictions, including through the administration of the “best interests of Malaysia” test for foreign investment in financial institutions.

As of February 2020, Bank Negara Malaysia limits foreign banks to eight physical branches in Malaysia and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank. In addition, Bank Negara Malaysia considers ATMs as equivalent to separate branches, and it has conditioned foreign banks’ ability to offer some services on commitments to undertake certain back office activities in Malaysia.

In September 2017, Bank Negara Malaysia published an “Exposure Draft on Outsourcing” that raised questions concerning data localization in Malaysia. As localization requirements can, in fact, increase exposure to privacy violations and compromise data, the United States encouraged Malaysia to allow financial institutions to utilize global hardware and software systems throughout their worldwide operations, so that they can effectively manage international security and commercial risk. Bank Negara Malaysia reposted the outsourcing draft for a second round of stakeholder comment in October 2018 and released the

final “Policy Document on Outsourcing” at the end of December 2018. The requirements took effect on January 1, 2019 with a six-month timeline for full compliance by June 30, 2019. The Bank also included a feedback statement containing responses to public comments on the initial drafts. The Policy Document addresses the management of outsourcing risk, due diligence of service providers and service level agreements, protection of data confidentiality, and business continuity planning. In response to feedback from U.S. firms, Bank Negara Malaysia will permit intra-company outsourcing, as long as the company to which the work is being outsourced is regulated by either Bank Negara Malaysia or a recognized regulatory institution.

In March 2018, Bank Negara Malaysia issued the Interoperable Credit Transfer Framework (ICTF), which requires that financial institutions process certain types of credit transfers in Malaysia via an approved operator of a shared payment infrastructure. The ICTF, which went into effect on July 1, 2018, includes requirements relating to payment system operators, but no guidelines have been set to define the approval process. In practice, only one supplier (which is partially owned by Bank Negara Malaysia) has been approved as a payment system operator under the ICTF. The final ICTF regulation did not take into account important stakeholder comments, and implementation has been delayed because of technical capacity issues. Since July 2018, Bank Negara Malaysia has been engaging with stakeholders on cloud technology, data flows, and cybersecurity as it assesses policy options to further develop Malaysia’s digital economy and establish Malaysia as a center for digital excellence. The United States continues to monitor these developments and has raised concerns in some areas, particularly with respect to requirements that certain transactions be processed and data be stored in Malaysia.

Professional Services

Engineering Services

Foreign engineers are not allowed to operate independently of Malaysian partners or to serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a permanent commercial presence only if all directors are Malaysian.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants before they may apply for a license from the Ministry of Finance. Malaysian citizenship or permanent residency is required for registration with the Malaysian Institute of Accountants.

Telecommunications Services

Despite having made only limited WTO commitments in the telecommunications services sector, Malaysia 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 provider and network service provider license categories. Only 70 percent foreign participation is permitted in those categories, although in certain instances Malaysia has allowed greater equity participation. The Malaysia government expects to liberalize these categories fully in 2020 as part of the National Fiberisation and Connectivity Plan.

Oil & Gas Services

Malaysia is expected to achieve market-based gas pricing in 2020 as Petroliaam Nasional Bhd (Petronas) aims to ensure sustainability of Malaysia's gas industry. To this end, Petronas has opened its receiving terminal for Liquefied Natural Gas (LNG) and facilitated the provision of Third-Party Access for gas pipeline terminals and LNG regasification terminals.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment in sectors such as retail, telecommunications, financial services, professional services, oil and gas, and mining is subject to certain restrictions. These restrictions include limitations or prohibitions on foreign equity and requirements that foreign firms enter into joint ventures with local partners. Pursuant to the National Land Code, foreigners must obtain prior approval from relevant state authorities for any acquisition of land for agricultural, residential, or commercial purposes. These authorities may impose conditions on ownership, including maximum thresholds for foreign equity in companies seeking to acquire land. Malaysia also maintains performance requirements that must be met to receive a customs waiver for manufacturing operations in foreign trade zones.

OTHER BARRIERS

Export Policies

Export taxes

Malaysia is the world's second largest producer and exporter of palm oil and products made from palm oil. Except when there is overstock, Malaysia imposes export taxes on crude palm oil based on fluctuations in the market price to ensure domestic supply and raise revenue. Taxes are imposed when export prices exceed RM 2,250 (approximately \$575) per ton and can range from 4.5 percent to 8.5 percent. As of early 2020, the export tax was close to six percent of the free-on-board price. Refined palm oil and refined palm oil products are not subject to export taxes. Malaysia also taxes exports of rubber, timber, and metal products in order to encourage domestic processing.

Export Licensing

Malaysia imposes non-automatic export licensing requirements on a variety of products, including minerals and ores.

Foreign Exchange Restrictions

In February 2017, Bank Negara Malaysia implemented foreign exchange restrictions requiring exporters 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. Several U.S. companies confirmed that this policy markedly increased the cost of doing business in Malaysia, and at least one company moved part of its business abroad in direct response to this policy. Bank Negara Malaysia indicated the possibility of granting approval for specific exporters to retain more than 25 percent of their export proceeds on a case-by-case basis; however, little information is available about these possible

flexibilities and whether they are available to all companies. Bank Negara Malaysia has not disclosed how many firms have been granted exceptions under the case-by-case review process.

In August 2019, Bank Negara Malaysia announced further liberalization aimed at providing greater flexibility and efficiency, including allowing resident treasury centers to hedge on behalf of their related entities, non-resident treasury centers to hedge on behalf of their related entities after a one-time registration with Bank Negara Malaysia, and non-residents to hedge on anticipatory basis.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was \$101.8 billion in 2019, a 26.2 percent increase (\$21.1 billion) over 2018. U.S. goods exports to Mexico were \$256.4 billion, down 3.4 percent (\$9.1 billion) from the previous year. Corresponding U.S. imports from Mexico were \$358.1 billion, up 3.5 percent. Mexico was the United States' 2nd largest goods export market in 2019.

U.S. exports of services to Mexico were an estimated \$33.8 billion in 2019 and U.S. imports were \$27.4 billion. Sales of services in Mexico by majority U.S.-owned affiliates were \$42.6 billion in 2017 (latest data available), while sales of services in the United States by majority Mexico-owned firms were \$9.9 billion.

U.S. foreign direct investment (FDI) in Mexico (stock) was \$114.9 billion in 2018, a 4.7 percent increase from 2017. U.S. direct investment in Mexico is led by manufacturing, nonbank holding companies, and finance and insurance.

TRADE AGREEMENTS

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. Under the NAFTA, tariffs on nearly all goods were eliminated progressively, with all final duties and quantitative restrictions eliminated, as scheduled, by January 1, 2008. After signing the NAFTA, the Parties concluded supplemental, and largely unenforceable, side agreements on labor and the environment.

United States–Mexico–Canada Agreement

On January 29, 2020, President Trump signed legislation implementing the United States–Mexico–Canada Agreement (USMCA). After over a year of additional consultations with Congress, on December 10, 2019, the United States, Mexico, and Canada signed a protocol of amendment to the USMCA that further strengthens the enforcement of its labor and environment commitments. Mexico's Senate ratified the Agreement on June 19, 2019, and will have to implement its commitments through changes to its laws and regulations prior to entry into force.

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

As detailed in this NTE Report, despite the NAFTA, a number of outstanding trade-related irritants with Mexico continue to exist. The USMCA contains a number of provisions that—once in force—are designed to address some of these issues. For example, the USMCA includes obligations to strengthen enforcement against counterfeiting and piracy, camcording of movies, satellite and cable signal theft, transparency with respect to new geographical indications, and copyright protection and enforcement in the digital environment. The USMCA also disciplines data localization measures for services providers and financial services providers, and locks in Mexico’s telecommunications and energy reforms.

IMPORT POLICIES

Nontariff Barriers

Import Licensing

On December 5, 2013, Mexico issued rules requiring importers to obtain a license before certain steel products may be shipped into Mexico; those rules were revised on August 11, 2014. Mexico’s stated objectives for the import licensing system is to combat customs fraud, improve enforcement of trade remedy measures, and improve statistical monitoring of steel imports. Because of administrative delays and complicated procedures for the processing of applications by the Secretariat of Economy, however, U.S. steel exporters and their Mexican customers have encountered disruptions in supply chains and additional shipment or demurrage costs as a result of the licensing requirement, as shipments may not enter Mexico until licenses are issued.

Mexico established an alternative scheme that reduced disruption to steel trade for some U.S. exporters and certain of their customers. However, that scheme was abruptly suspended on December 31, 2018, with no prior notice and no indication as to whether or when it would be resumed. Notification of the suspension caused confusion and concern for many U.S. steel exporters and their customers in Mexico. In July 2019, following months of U.S. Government advocacy, the Secretariat of Economy reinstated the scheme for several U.S. exporters and their Mexican importers. The United States will closely monitor the administration of the alternative scheme, and will continue to engage with Mexico to address stakeholder concerns and press Mexico to ensure that its import requirements do not disrupt trade between U.S. steel exporters and their Mexican customers.

Mexico applies several regulations governing the importation of footwear, apparel, and textile goods, including the creation of reference prices and the establishment of an import licensing system. According to the Mexican government, the measures are designed to enhance the productivity and competitiveness of Mexican footwear and apparel producers and protect Mexico’s domestic footwear and apparel industries from the importation of undervalued goods. Beginning in December 2018, the Secretariat of Economy abruptly canceled automatic import licenses for several U.S. companies based on “inconsistencies” that have not been adequately explained. In addition, U.S. exporters expressed a number of concerns with regard to the schemes, including a lack of transparency in how reference prices are determined and uneven enforcement by Mexico’s customs and tax authorities. The U.S. Government continues to monitor these schemes and encourages the Secretariat of Economy and the Servicio de Administracion Tributaria (SAT) to clarify how requirements are applied.

Customs Barriers and Trade Facilitation

Mexico ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) in July 2016. However, U.S. exporters continue to express concerns about Mexican customs administrative procedures, including insufficient prior notification of procedural changes, inconsistent interpretation of regulatory

requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules.

In 2015, SAT issued a draft regulation that would impose more formal requirements on the customs entry process for low-value goods entering Mexico, especially for goods purchased online. U.S. companies have expressed concern that these requirements, if enacted, would make it more difficult for companies to use Mexico's informal entry requirements and increase the time it takes to ship goods to Mexico. Exporters remain in discussions with SAT regarding these concerns. As of December 2019, new regulations had not been adopted.

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. Ten cargo pre-inspection programs are currently in operation.

Once fully implemented in 2020, the USMCA will help reduce costs and bring greater ease and predictability to customs clearance in Mexico, including through provisions requiring transparent, predictable, and consistent application of customs procedures throughout Mexico. The USMCA Customs Administration and Trade Facilitation chapter includes an expanded scope of advanced rulings, provisions enhancing communication with traders on customs developments, and immediate release of express shipments upon arrival in most cases, and allow for pre-arrival processing via electronic format.

The United States continues to monitor these issues, including as they pertain to implementation of the USMCA and other trade obligations.

Modification to List of Goods Subject to Compliance with Official Mexican Standards

On October 23, 2019, Mexico's Secretariat of Economy published an amendment to Annex 2.4.1 of the "Resolution by which the Secretariat of Economy issues General Rules and Criteria regarding Foreign Trade," which identifies the tariff codes of goods subject to compliance with Official Mexican Standards (NOMs) at the point of entry into Mexico. The changes to Annex 2.4.1 entered into force on June 3, 2019. U.S. industry expressed concerns about the changes, which created new testing and certification requirements for certain products that previously were not subject to mandatory NOM compliance.

In 2019, the United States raised concerns about the changes to Annex 2.4.1 bilaterally and at the November 2019 meeting of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Medical Devices, Supplies, and Pharmaceuticals

Changes to product approval, registration, and testing requirements are unclear to industry representatives. In addition, some companies have experienced delays in receiving registration/marketing approvals from Mexico's food and health safety regulator, the Federal Commission for the Protection Against Sanitary Risk (Comisión Federal para la Protección contra Riesgos Sanitarios, or COFEPRIS).

Glyphosate

Mexico's Secretariat of the Environment and Natural Resources (SEMARNAT) has rejected import permits for glyphosate. Mexico has not notified any measure to WTO Members or provided an opportunity to comment, nor provided scientific evidence for the rejections. USTR and the U.S. Department of

Agriculture (USDA) continue to press Mexico to grant import permits for glyphosate, emphasizing the importance for a science-based, risk-based regulatory approach.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Alcoholic Beverages

The final Mexican Official Standard NOM-199-SCFI-2017, Alcoholic Beverages-Denomination, Physicochemical Specifications, Commercial Information and Test Methods, published on October 30, 2017, included some positive changes from the draft on which the United States and U.S. industry submitted comments, such as a clarification of the standard of identity for bourbon and removing the restriction on alcohol by volume for Sambuca. Nonetheless, U.S. industry continues to have significant concerns with the final regulation. Concerns from the spirits industry include ageing requirements, minimum and maximum limits for various components, alcohol content limits, as well as minimum spirit content requirements for certain labels. The wine industry also has expressed concern about Mexico's approach to measuring methanol.

Further, on August 27, 2018, Mexico notified its Draft Conformity Assessment Procedure for Mexican Official Standard NOM-199-SCFI-2017: Alcoholic Beverages – Designations, physiochemical specifications, commercial information, and test methods. While the United States strongly supports Mexico's objective of managing the public health challenges associated with adulterated alcohol, the draft regulation appears to place several new testing and documentation requirements on imports despite the lack of concerns about illicit or adulterated alcohol being sourced from the United States. The United States discussed the draft conformity assessment procedure measure with Mexico in March 2018. In response to U.S. concerns about the draft measure's lack of clarity, Mexico indicated that it was considering additional testing for wines and certification for spirits. In June 2018, the United States expressed its concerns regarding these additional measures, as they could negatively affect U.S. exports of wine and spirits.

In 2019, the United States had \$136 million in domestic exports of alcoholic beverages to Mexico. The United States exported \$59 million of beer, followed by spirits at \$58 million, and wine at \$18 million. The United States also exported \$1 million in other alcoholic beverages.

The United States will continue to monitor implementation of NOM 199 and any additional testing and certification requirements for wine and spirits, and is reviewing the final measure related to conformity assessment procedures for alcoholic beverages.

Front of Pack Nutrition Labeling

On October 14, 2019 Mexico notified a draft regulation to the WTO (G/TBT/N/MEX/178/Add.9) that would replace its mandatory informative front-of-package nutrition label (previously similar to the voluntary Facts up Front label used by U.S. industry) with a mandatory interpretative front-of-package nutrition label (FOPNL). The FOPNL measure, notified domestically on October 7, 2019, would require product labels to carry up to five black stop signs for products that exceed specified threshold levels of calories, sugars, saturated fats, trans fats, and sodium. Products with two or more warning signs would also have to include the message "avoid excessive consumption" in addition to the "stop sign"-shaped warning labels. The measure also requires an additional stop sign for products that contain a sweetener (natural or synthetic) along with the text "Contains sweeteners, avoid in children." Products could carry up to six stop signs in total. In addition, products could carry a separate warning for added caffeine with the text "Contains caffeine, avoid in children." Any processed foods requiring one or more warnings would not be

permitted to include in or on packaging images of characters, cartoons, or celebrities, or offer toys, gifts, offers, or contests. The labelling restrictions would apply also to advertisements of these products, on social media or other platforms, and promotional offers regarding price or content, and marketing of related products (such as games) would be banned.

The United States raised with Mexico on the margins of the November 2019 WTO TBT Committee meeting U.S. interest in the measure, U.S. intent to comment, and U.S. preliminary concerns. On December 10, 2019, the United States and many U.S. stakeholders provided comments to the notification. In 2019, U.S. shipments of processed products to Mexico, the second largest market for the United States after Canada, totaled \$3.4 billion. In 2020, the United States will continue to discuss its concerns with Mexico as it works to finalize the measure.

Sanitary and Phytosanitary Barriers

Fresh Potatoes

Mexico prohibits the shipment of U.S. fresh potatoes beyond a 26 kilometer zone along the U.S.-Mexico border. In 2003, the United States and Mexico signed the Table Stock Potato Access Agreement, which provided a process for allowing U.S. potatoes access to the whole of Mexico over a three-year period. However, Mexico has refused to move forward with implementation of the Agreement, citing pest detections in shipments. In 2011, the North American Plant Protection Organization (NAPPO) released a report that identified six pests, which should be considered quarantine pests by Mexico in “potato[es] for consumption.” The NAPPO report and recommendations were accepted by both the United States and Mexico. On May 19, 2014, Mexico published new import regulations for potatoes in the *Diario Oficial*. These new regulations would allow the importation of U.S. potatoes into any part of Mexico. The Mexican Potato Industry Association (CONPAPA) challenged the 2014 import regulations in Mexican courts.

On July 15, 2016, the Peña Nieto Administration issued decrees to reinstate U.S. fresh potato access to areas beyond the 26 kilometer border zone, superseding the 2014 regulations issued by Mexico’s Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA), which CONPAPA had blocked with 10 court injunctions. However, CONPAPA sought and obtained from Mexican courts three new injunctions against these decrees as well.

In September 2016, SAGARPA agreed to finalize a revised pest risk assessment (PRA), which was published in December 2016. On August 4, 2017, and again in June 2018, a Mexican court issued another ruling to prohibit imports of U.S. potatoes beyond the 26-kilometer border zone. In late October 2018, the Supreme Court of Mexico agreed to address the appeal of the June 2018 ruling. USDA and USTR, in consultation with the U.S. potato industry, continue to seek a solution that would lead to expanded market access for U.S. potatoes to all of Mexico. The remaining legal challenges are ongoing.

Stone Fruit

Mexico has stated that, due to concerns about the oriental fruit moth, it would only accept peaches, nectarines, and plums from the Pacific Northwest if producers allow on-site inspection and use methyl bromide fumigation. Mexico indicates that this will continue until it completes its ongoing pest risk assessment (PRA) for a systems approach method, which could allow importation from this region without regular on-site inspections or fumigation. On October 30, 2019, the United States again asked Mexico to provide a completion date for the PRA; Mexico said they would complete the PRA as soon as possible. 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.

Agricultural Biotechnology

COFEPRIS has not made any decisions on applications for authorization of agricultural biotechnology products intended for use in food and feed since May 2018. Mexico's Biosafety Law requires COFEPRIS to make a decision on a complete application within six months of receipt. The United States is pressing Mexico to ensure COFEPRIS undertakes and completes its approval procedure for agricultural biotechnology products without undue delay as well as maintains a transparent process.

Cultivation of Biotechnology Cotton

Mexico has rejected applications for cultivation of biotechnology cotton. Biotechnology cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on biodiversity. The U.S. Government continues to press Mexico to reconsider these applications and use a science- and risk-based approach.

GOVERNMENT PROCUREMENT

The Mexican government announced plans December 1, 2018, to centralize almost all federal government procurement under the Secretariat of Finance (Hacienda). The government believes the centralization will help curb corruption, reduce bureaucratic inefficiencies, and achieve lower prices through consolidated purchasing. The state-operated oil company, Pemex, and the Federal Electricity Commission (CFE) were exempted from the centralization due to their designations as "productive companies of the state." The Mexican armed forces have also been exempt from consolidated procurement on national security grounds. The Secretariat of Finance's Comptroller (Oficial Mayor) now controls all purchasing for all other agencies. Hacienda announced June 28, 2019, that 61.2 percent of bids for medicine and medical supplies destined for government and public hospitals and clinics via the Secretariat of Health and Mexican Social Security Institute (IMSS) were declared "desierto" – either they did not receive bids or Hacienda considered the bids invalid. U.S. exporters expressed concern the procurement process was less transparent than in previous years and did not provide adequate preparation time. U.S. companies expressed similar concerns that the 2020 procurement cycle did not have adequate preparation time and there were multiple uncoordinated tenders announced. In addition, for certain construction projects there has been an increase in usage of direct awards for government contracts.

Mexico is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the NAFTA and the USMCA contain disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the 2019 Special 301 report. As described in that report, obstacles to U.S. trade in intellectual property (IP)-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 IP 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. The United States has identified the Tepito market in Mexico City and the San Juan de Dios market in Guadalajara as notorious markets selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in April 2018, Mexico and the EU came to an agreement in principle on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and

beers. The United States remains highly concerned about Mexico negotiating product-specific IP outcomes as a condition of market access from the EU, and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico recently created a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

The United States continues to work closely with Mexico to make progress in addressing other trade-related IP issues, and these efforts have resulted in some significant gains. In 2018, Mexico implemented amendments to its Industrial Property Law to strengthen the trademark opposition system and protect holograms, scents, and sounds as marks.

Mexico agreed to important IP provisions in the USMCA. When the USMCA is fully implemented in Mexico, these commitments should substantially improve the IP environment in Mexico and help to modernize Mexico's copyright, trademark, patent, and IP enforcement systems.

SERVICES BARRIERS

Audiovisual Services

Pay television is an important outlet for foreign programmers and continues to be subject to more stringent advertising restrictions than free-to-air broadcast television, which is supplied by domestic operators. Despite ambiguity in Mexican law, television programmers have long been allowed to follow the industry practice of inserting up to 12 minutes per hour for advertising without exceeding 144 minutes per day, a practice upheld by Mexico's court as consistent with Mexico's statutes. In order to enhance predictability in the market, the United States is urging Mexico's regulator to publicly affirm this interpretation, which has guided pay-TV advertising for decades, as well as clarify that infomercials are not subject to minute limitations. 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.

Mexico prohibited foreign investment in its broadcasting sector until the 2014 telecommunications reform allowed for up to 49 percent foreign equity in Mexican broadcasting enterprises. However, actual investment is limited to the share permitted for Mexican broadcasting investment in the company's country of origin. To enhance competition, Televisa was declared a "preponderant agent" in the free-to-air television broadcasting market and is therefore subject to tougher regulation, including the requirement to share its broadcasting infrastructure with competitors.

Telecommunications Services

A number of important, longstanding market access barriers were removed by a sweeping reform of the telecommunications sector in 2013 and 2014. The telecommunications reform removed all caps on foreign investment in the telecommunications sector; instituted a new, strengthened, and independent regulator; created specialized telecommunications courts; and implemented 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, including increased investment in the sector. Through investment and the acquisition of mobile providers Iusacell and Nextel Mexico, AT&T has become the country's third largest carrier. According to information released by the Instituto Federal de Telecomunicaciones (IFT) (Federal Telecommunications Institute), by the end of 2018, consumer prices fell 43 percent from levels in 2013, when the reform was enacted. The quality of service and carrier accountability also have improved. According to IFT's statistics report for 2018, Mexico's mobile connection base reached 120 million lines, or 96 out of each 100 residents. Despite the improved regulatory framework, however, new market entrants

must still compete with the traditional dominant supplier, which has maintained a market share well above 60 percent. There has been no significant change in the relative market shares of Mexico's three main carriers in the last three years.

On March 31, 2018, IFT adopted an order that directed the traditional dominant supplier to restructure itself within two years into (1) a local access company that controls passive infrastructure assets such as local loops and dedicated links, (2) a wholesale services division that provides wholesale services, and (3) a retail services division that provides retail services. The local access company and the wholesale services division will be obligated to provide their services and infrastructure on a nondiscriminatory basis. USTR encourages Mexico to ensure a full implementation of this IFT order which is a key part of the reform of the telecommunications sector in Mexico.

INVESTMENT BARRIERS

While the Mexican government retains ownership of subsoil resources, Mexico's 2013 energy reform allows private companies to explore and extract hydrocarbons and participate in downstream operations, including refining, petrochemicals, transport, retail, and supply, subject to local content requirements. Local content requirements vary by location and phase of project and are updated by the Secretariat of Economy. Under regulations published in 2017, on-land activities, exploration, and evaluation work require a minimum average local content of 26 percent. For development phase land projects, the local content requirement is 27 percent in the first year in effect, 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; development activities require 25 percent local content in the first year, gradually increasing to 35 percent by 2025.

Local content requirements in deep and ultra-deep water activities are lower than those established for shallow waters and onshore contracts because of the complexity and technology requirements. For deep and ultra-deep water activities, the Secretariat of Economy has set minimum local content requirements for the exploration phase at 3 percent for the first four years of exploration, 6 percent for the next three years, and 8 percent for the following three years. For development phase activities, the minimum local content requirement is 4 percent, while for production phase activities the requirement is 10 percent.

Entitlements and exploration and production contracts include specific penalties for failure to comply with local content requirements.

Mexico's hydrocarbons law restricts the ability of foreign investors to use international arbitration to resolve certain types of disputes with the government. For investors seeking to resolve such disputes, the only available forum is the Mexican court system.

Consistent with his campaign promise, President Lopez Obrador suspended oil auctions but reassured companies his administration would respect contracts awarded under the previous administration as part of the 2013 energy reform. In addition, the Lopez Obrador administration publicly called for private investors to "voluntarily renegotiate" gas supply contracts, raising significant investor concern.

Certain other sectors or activities, such as ground transportation services and transportation infrastructure, (such as airport management), are closed to foreign participation. Under the Foreign Investment Law, foreigners may wholly own a Mexican freight motor carrier company, but are restricted to carrying only

international cargo; foreign ownership is capped at 49 percent for express delivery companies. Mexico also prohibits foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders (although foreigners may acquire use of residential property in these zones through trusts administered by Mexican banks). Under the Foreign Investment Law, foreigners can invest up to 49 percent in land for agricultural, livestock, and forestry purposes if they are not in the previously mentioned excluded areas. An interagency Comisión Nacional de Inversiones (National Foreign Investment Commission) reviews foreign investment in Mexico's restricted sectors, as well as investments in unrestricted sectors in which foreign equity exceeds 49 percent and for which the value exceeds \$165 million (adjusted annually).

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was \$1.9 billion in 2019, a 30.2 percent increase (\$441 million) over 2018. U.S. goods exports to Morocco were \$3.5 billion, up 15.6 percent (\$469 million) from the previous year. Corresponding U.S. imports from Morocco were \$1.6 billion, up 1.8 percent. Morocco was the United States' 49th largest goods export market in 2019.

U.S. exports of services to Morocco were an estimated \$965 million in 2018 (latest data available) and U.S. imports were \$969 million. Sales of services in Morocco by majority U.S.-owned affiliates were \$243 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Morocco (stock) was \$408 million in 2018, a 1.0 percent decrease from 2017.

TRADE AGREEMENTS

The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006, eliminating duties on 95 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over the subsequent 10 years and eliminated as of January 1, 2015. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, such as tariff-rate quotas (TRQs). Goods from key U.S. export sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty-free or other preferential duty treatment when entering Morocco. In addition, the USMFTA includes commitments for increased regulatory transparency and the protection of intellectual property (IP) rights as well as the maintenance of labor and environmental laws.

Morocco has undertaken reforms to liberalize its economy as a World Trade Organization (WTO) Member and as a party to several bilateral free trade agreements, including the USMFTA and an association agreement with the European Union (EU), its single largest trading partner.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Pursuant to the USMFTA, Morocco maintains a number of TRQs, including for U.S. durum and common wheat, beef, and poultry exports. Due to underperforming wheat exports, the United States has repeatedly pressed Morocco for reforms to its wheat tender system. In 2019, Morocco and the United States agreed to increase the frequency of Moroccan auctions and implemented a schedule that requires auctions when the tariff rate is changed.

At the October 2017 USMFTA Sanitary and Phytosanitary (SPS) and Agriculture Sub-Committee meeting, Morocco committed to honoring its commitments under the USMFTA to accelerate tariff phase-outs on approximately 40 tariff lines of wheat, beef, and poultry products in the event Morocco applies a lower duty to EU products. On January 1, 2020, Morocco issued a customs circular that enforced Morocco's

accelerated tariff phase out for several U.S. products subject to the preference clause. The circular also contained the 2020 TRQ amounts and updated tariff rates for U.S. poultry, beef, and wheat.

Morocco last notified its levels of agricultural domestic support to the WTO for the year 2007 and last notified its agricultural export subsidies for the year 2017. Morocco appears to provide high levels of domestic support for its wheat production. Morocco also appears to subsidize agricultural exports to the United States. The U.S. Government has raised these issues with Morocco.

Taxes

According to its General Code of Taxes, Morocco levies a 20 percent value-added tax (VAT) on imported meat, poultry, seafood, olive oil, and dates. Exceptions exist for specific imported meat, seafood, and poultry patties. In comparison, all domestic meat, poultry, seafood, olive oil, and dates are exempt from VAT payment. In 2019, prospective importers of U.S. seafood, beef, and poultry stated that the VAT put U.S. exports at a cost disadvantage. The United States raised this issue at the sixth meeting of the USMFTA Joint Committee in July 2019 and will continue to closely monitor Morocco's application of VAT to U.S. products.

Nontariff Barriers

Customs Barriers and Trade Facilitation

U.S. firms have raised concerns with a lack of efficiency and transparency in Moroccan customs procedures. Some U.S. companies have cited Morocco's approach to customs valuation and Morocco's requirement of a certificate of non-manipulation for goods in transit as impediments to the clearance or movement of their shipments and as questionable in view of USMFTA commitments. During the July 2019 USMFTA Joint Committee meeting, Morocco cited a customs circular issued on June 20, 2019, that would waive the certificate of non-manipulation for shipments in containers that remained sealed during transit. The United States will continue to monitor the situation.

In order to enhance the flow of bilateral trade, the United States and Morocco signed a bilateral trade facilitation agreement in November 2013. The agreement includes commitments reflecting practices developed since the USMFTA was signed in 2004 that facilitate the movement of goods. It includes provisions on automation, transit, Internet publication of customs regulations and procedures, transparency with respect to customs penalties, and other initiatives that will improve Morocco's environment for trade in goods.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In July 2016, the Moroccan government issued an implementation decree that allows for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards (FMVSS). Previously, Morocco only allowed the import of automobiles meeting the United Nations Economic Commission for Europe (UNECE) vehicle standards, effectively barring many automobiles produced in the United States from entering the Moroccan market. However, U.S. exporters have conveyed that barriers to automotive trade persisted in 2019. Although issuance of the implementation decree should have enabled importers to clear customs using self-certification documents to demonstrate compliance with U.S. FMVSS, Moroccan customs has still not adopted a procedure to regularize this process. As a result, importers face uncertainty at the border and delays in release of their merchandise.

Sanitary and Phytosanitary Barriers

At the 2017 meeting of the USMFTA SPS and Agriculture Sub-Committee, Morocco committed to finalize export certificates for U.S. beef and poultry products, and by December 2018, export certificates were completed and the market was opened to U.S. exports. In 2019, Morocco finalized sanitary certificates to allow imports of U.S. processed egg products and bovine semen. Morocco also upheld its commitment to keep import tolerances for Deoxynivalenol (DON) in wheat at levels consistent with Codex Alimentarius Commission standards.

Market access negotiations to allow exports of U.S. animal genetics, feed, processed egg products, and seed potatoes continue with Morocco.

GOVERNMENT PROCUREMENT

The USMFTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for covered procurements. Morocco permits U.S. suppliers to bid on procurements by all Moroccan central government entities, as well as procurements by the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers.

Morocco is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

SERVICES BARRIERS

Although Morocco's insurance regulation does not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that in practice the Moroccan 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 PROTECTION

Inadequate intellectual property (IP) protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat trade in counterfeit and pirated goods, Morocco continues to be a thriving market for these illicit products, particularly unlicensed software. Weak enforcement efforts also have led to rising concerns from U.S. clothing manufacturers over the prevalence of counterfeit apparel, particularly sportswear.

In 2019, the United States and Morocco engaged intensively on matters related to Morocco's policy toward geographical indications (GIs). The United States remains highly concerned about the EU negotiating with Morocco and other countries to adopt overly broad protection of GIs as a condition of market access into the EU. The EU's approach adversely impacts access for U.S. and other producers and prevents all producers, other than in certain EU regions, from using certain product names. The United States reiterates the importance of each GI being independently evaluated on its individual merit, with adequate due process requirements.

U.S. companies remain concerned about Morocco's lack of protection against unfair commercial use, as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, particularly for new indications of innovative drugs. In 2017, Morocco proposed altering its Pharmaceutical Law 17-04, in a manner that would require companies to disclose formulations for their non-generic products to a local manufacturing plant in order to secure market authorizations to

manufacture, import, distribute, promote, and sell their products in Morocco. While Morocco has made no change to the law to date, the United States continues to raise these issues with the government and will continue to monitor the situation closely.

OTHER BARRIERS

U.S. firms cite irregularities in various government procedures as among the greatest obstacles to trade and investment in Morocco. In particular, companies point to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. Companies also note the challenges created by the need to follow rigid protocols and navigate excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's cumbersome tax and employment regimes and property registration procedures also impede business.

Moroccan restrictions on purchasers that need, or would like, to prepay orders of imported merchandise are often problematic for U.S. exporters that require 100 percent advance payment. 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. 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. In 2019, Morocco confirmed that the 30 percent limit remains in effect, but government officials indicated that it would be phased out over an indefinite timeline. The United States will continue to press for removal of the limitation.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was \$165 million in 2019, a 29.4 percent increase (\$37 million) over 2018. U.S. goods exports to New Zealand were \$4.0 billion, down 2.7 percent (\$111 million) from the previous year. Corresponding U.S. imports from New Zealand were \$4.1 billion, down 1.8 percent. New Zealand was the United States' 47th largest goods export market in 2019.

U.S. exports of services to New Zealand were an estimated \$2.9 billion in 2018 (latest data available) and U.S. imports were \$2.7 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were \$3.9 billion in 2017 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were \$401 million.

U.S. foreign direct investment (FDI) in New Zealand (stock) was \$11.3 billion in 2018, a 5.4 percent decrease from 2017. There is no information on the distribution of U.S. FDI in New Zealand.

TRADE AGREEMENTS

New Zealand has free trade agreements with Australia, Brunei, China, Hong Kong, Korea, Malaysia, Singapore, Taiwan, Thailand, and the Association of Southeast Asian Nations (ASEAN). The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which entered into force on December 30, 2019, expanded New Zealand's free trade agreement network to include Japan, Canada, Mexico, and Peru. In 2018, New Zealand ratified the Pacific Agreement on Closer Economic Relations (PACER Plus) with nine Pacific Island nations and Australia, which has not entered into force as of the end of 2019. In November 2019, New Zealand, along with 14 other negotiating parties, announced substantial conclusion of the Regional Comprehensive Economic Partnership (RCEP) text. In January 2020, New Zealand, along with Chile and Singapore, announced substantial conclusion of negotiations for the Digital Economy Partnership Agreement. New Zealand is currently negotiating free trade agreements with the Pacific Alliance (Chile, Colombia, Mexico, and Peru), the European Union, and India.

IMPORT POLICIES

New Zealand's average Most Favored Nation (MFN) applied tariff rate was 2.0 percent in 2018 (latest data available). New Zealand's average MFN applied tariff rate was 1.4 percent for agricultural products and 2.1 percent for non-agricultural products in 2018 (latest data available). New Zealand has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 9.7 percent.

New Zealand applies a zero percent duty on an MFN basis on 72.4 percent of its tariff lines in agricultural goods and on 63.7 percent of its tariff lines in non-agricultural goods. In August 2017, the government decided that tariff levels would remain unchanged from their current levels, except where they are reduced through trade agreements.

Taxes

In June 2019, New Zealand passed a law requiring non-resident suppliers of low-value goods, including online marketplaces and electronic commerce platforms, to register with the Inland Revenue Department and collect Goods and Services Tax (GST) at the point of sale. From December 1, 2019, non-resident suppliers of goods with sales to New Zealand customers that exceed or are expected to exceed NZ\$60,000

(approximately \$38,000) in a 12-month period must register with IRD. Non-resident suppliers must also charge GST at the point of sale on goods bought by a New Zealand customer that exceed NZ\$1,000 (approximately \$632). Customs New Zealand retains the responsibility to collect GST on goods valued at more than NZ\$1000; however, offshore suppliers can elect to charge GST on goods valued at more than NZ\$1,000 if 75 percent or more of their imports are valued at less than NZ\$1,000. Prior to the law change, online purchases by New Zealand customers of goods valued at more than NZ\$400 (approximately \$253) had GST and tariff duty collected at the border by Customs New Zealand. GST registration requires the non-resident company to provide two pieces of evidence to prove the customer is a resident in New Zealand, such as their billing address or IP address, and the company file a GST return every quarter even if it does not make any sales.

SANITARY AND PHYTOSANITARY BARRIERS

Plant Health

In April 2019, the Ministry for Primary Industries (MPI) placed a temporary ban on U.S. citrus imports after Biosecurity New Zealand found fruit fly larvae in a single orange during a routine inspection of a consignment from California. The larvae discovered was of the spotted wing drosophila and is not normally associated with citrus. MPI and USDA conducted negotiations for new import requirements and, on November 19, 2019, MPI announced an amendment to Import Health Standard 152. The amendment adds additional clearance requirements and restores market access for U.S. citrus effective immediately. The United States will monitor implementation of the new amendment to Standard 152.

Animal Health

New Zealand maintains restrictions on imports of pork from the United States related to porcine respiratory and reproductive syndrome (PRRS). Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing.

Industrial Goods

In July 2019, Biosecurity New Zealand released new rules requiring treatment of all imported vehicles, machinery, and parts to prevent entry of the brown marmorated stink bug (BMSB). The regulations apply during the BMSB season, from September 1, 2019 through to April 30, 2020. Following industry consultation, MPI increased the number of “risk countries” requiring off-shore treatment of imported vehicles, machinery, and parts from 17 to 33 countries, including the United States. Previously, only uncontainerized vehicle cargo from risk countries required treatment before arriving in New Zealand.

INTELLECTUAL PROPERTY PROTECTION

New Zealand generally provides strong intellectual property (IP) protection and enforcement. Between November 2018 and April 2019, the Ministry of Business, Innovation, and Employment released an Issues Paper and sought public feedback on the efficacy of the current copyright regime. New Zealand is analyzing the outcomes of the review and will prepare options for changing its copyright regime. The United States continues to monitor the outcome of this review, including with respect to technological protection measures and copyright term.

In December 2018, New Zealand acceded to the World Intellectual Property Organization (WIPO) Performance and Phonograms Treaty and the WIPO Copyright Treaty (collectively the WIPO Internet

Treaties) and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. All three treaties entered into force on March 17, 2019.

The United States continues to monitor New Zealand's IP-related legislation, including implementation of the WIPO Internet Treaties and patent law reforms enacted in 2014. The United States will continue to work with New Zealand to address any IP issues.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Digital Services Tax

New Zealand is considering imposing a tax on the revenues of digital companies, in addition to its existing GST. In June 2019, New Zealand issued a public discussion document outlining options for taxing the digital economy. The discussion document states that New Zealand supports an internationally agreed solution at the OECD but that it will consider a unilateral tax if the OECD cannot make sufficient progress. The United States continues to monitor New Zealand's consideration of a unilateral digital services tax.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The New Zealand Overseas Investment Office (OIO) screens any foreign investment that would result in the acquisition of 25 percent or more of ownership in, or of a controlling interest in, "significant business assets," which are defined as assets valued at more than NZ\$100 million (approximately \$64 million). This threshold is higher for some countries that have entered into trade agreements with New Zealand. Additionally, the OIO screens any foreign investment that would result in the acquisition of 25 percent or more of a fishing quota either directly or through the acquisition of a company that already possesses a quota. The OIO also reviews the acquisition of land defined as "sensitive" by the Overseas Investment Act (OIA), which includes farmland greater than five hectares, land adjoining the foreshore, and conservation land. In August 2018, the government amended the OIA to expand the definition of "sensitive land" to include existing residential real estate.

In November 2019, New Zealand announced that it would add a "national interest test" to its overseas investment rules for critical infrastructure. Under the previous OIA rules, assets such as ports and airports, telecommunications infrastructure, electricity and other critical infrastructure are not assessed through a "national interest lens." The new rules also will assess the impact on water quality and sustainability of water bottling enterprises, when considering an investment in "sensitive land." According to the New Zealand government, legislation implementing these changes will be introduced in early 2020.

OTHER BARRIERS

The Pharmaceutical Management Agency (PHARMAC) determines which medicines to fund for use in community and public hospitals, negotiates prices with pharmaceutical companies, and sets subsidy levels and reimbursement criteria. In 2013, PHARMAC's role was expanded to include the management of community medicines, pharmaceutical cancer treatments, the National Immunization Schedule, management of all medicines used in District Health Board hospitals, and the national contracting of hospital medical devices.

Some U.S. stakeholders have expressed concern about aspects of PHARMAC's regulatory process, including lack of transparency, timeliness, and predictability in the funding process and lengthy delays in reimbursing new products.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was \$2.2 billion in 2019, a 14.3 percent increase (\$279 million) over 2018. U.S. goods exports to Nicaragua were \$1.7 billion, up 1.4 percent (\$24 million) from the previous year. Corresponding U.S. imports from Nicaragua were \$3.9 billion, up 8.4 percent. Nicaragua was the United States' 68th largest goods export market in 2019.

U.S. exports of services to Nicaragua were an estimated \$421 million in 2018 (latest data available) and U.S. imports were \$492 million. Sales of services in Nicaragua by majority U.S.-owned affiliates were \$379 million in 2017 (latest data available), while sales of services in the United States by majority Nicaragua-owned firms were \$70 million.

U.S. foreign direct investment (FDI) in Nicaragua (stock) was \$138 million in 2018, a 26.2 percent decrease from 2017.

TRADE AGREEMENTS

Dominican Republic-Central America–United States Free Trade Agreement

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

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. Approximately 95 percent of Nicaragua's tariff lines are at 15 percent or lower. The customs authority currently applies this tariff on a unilaterally determined value, purportedly based on a projected sales price. Businesses report that the pre-determined value is unrealistic and results in inflated taxes. Due to the lack of transparency, it is unclear exactly when and how customs authorities charge this tariff. Some businesses state that the tariff is based on a schedule produced by the National Institute of Information and Development (INIDE), while others report that customs officials simply triple the declared value of the product to arrive at a value they determine to be the sales price. In 2007, in response to rising prices, Nicaragua's Ministry of Industry Commerce and Development 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 the end of June 2020.

Under the CAFTA-DR, as of January 1, 2015, originating U.S. consumer and industrial goods are to enter Nicaragua duty free. All textile and apparel goods that meet the Agreement's rules of origin also enter

Nicaragua duty free and quota free. Nicaragua's Customs Authority (DGA) recently distributed a comprehensive questionnaire to several importers seeking detailed information about the products they import, including information about production processes, ingredients, and the countries of origin. Some businesses have reported that the requested information includes proprietary business data or trade secrets. It is unclear at this time what information Nicaraguan customs would consider sufficient for products to continue to enter duty free under the CAFTA-DR. In one case, a U.S. business submitted a completed questionnaire for a packaged food item it has imported duty free for 14 years, leaving out only answers that it deemed to be proprietary business data or trade secrets. DGA responded that the response was deficient and determined that the business owes back tariffs and taxes for previous imports and levied a separate fine in the same amount as the owed back tariffs and taxes. It is also unclear how DGA determines who must fill out the questionnaire, and for which products. Only a few businesses report receiving the questionnaire. These businesses import many other products for which information was not requested.

U.S. agricultural goods also have preferential access to the Nicaraguan market under the CAFTA-DR. In accordance with its obligations under the CAFTA-DR, Nicaragua eliminated its remaining tariffs on most U.S. agricultural goods on January 1, 2020, and will eliminate its remaining tariffs 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 open TRQs on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system; the United States is carefully tracking Nicaraguan issuance of these permits.

Taxes

The Nicaraguan government levies a selective consumption tax of 15 to 42 percent on some luxury items, with a few exceptions, such as yachts and helicopters, for which the tax is zero percent. Domestic goods are taxed on the manufacturer's price, while imports were previously taxed on a cost, insurance, and freight (CIF) value. However, after fiscal reforms in 2019, customs officials began basing this tax on a unilaterally devised purchase price that often seems to be inflated and does not reflect original procurement conditions. The calculation of this new purchase price is opaque. Multiple importers report that customs officials simply triple the CIF value to provide a baseline for the tax. Anecdotal evidence exists of businesses appealing to the customs court to review the arbitrarily set purchase price. Some of these businesses abandon the appeal process and pay the tax as initially calculated, while others have been able to get it reduced after a lengthy legal process. Alcoholic beverages and tobacco products were previously taxed on the price billed to the retailer, but are now based on the calculation of a presumed purchase price as well. The INIDE schedule of retail prices is supposed to provide a baseline for this tax, but the calculation behind the INIDE schedule is also opaque.

In February 2019, the Nicaraguan government implemented tax and social security reforms. It extended its standard 15 percent value added tax to basic goods that were previously exempt. The newly taxed goods include most meats, dairy products, imported onions and potatoes, and refined sugar. The government also tripled income taxes on businesses with gross annual income exceeding \$5 million. When the Nicaraguan government announced the reforms, it also announced it would make revisions to the reforms within 90 days. As of March 2020, the government had not announced any revisions.

Nontariff Barriers

Customs Barriers and Trade Facilitation

Under the Agreement, all CAFTA-DR countries, including Nicaragua, committed to improve transparency and efficiency in administering their customs procedures. All CAFTA-DR countries, including Nicaragua, also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, agreed to share proposed measures with the public and the other CAFTA-DR countries for comment, and to share information with the other CAFTA-DR countries to combat the illegal transshipment of goods in circumvention of a Party's customs laws.

However, Nicaragua took no action to improve transparency and efficiency in administering its customs procedures in 2019. Businesses report that Nicaraguan customs officials routinely delay customs inspections, and levy arbitrary fines for minor issues such as typographical errors. There are also reportedly significant delays at the border. Businesses report a significant increase in the number of incoming shipments subject to further inspections, with a majority of shipments now subject to such inspection. Some businesses express concerns that customs officials might target shipments for further scrutiny for political reasons.

In addition, six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, meaning importers often experience delays and additional costs if goods have to be stored in Managua while testing is completed. Some businesses report that customs officials arbitrarily hold or open containers that contain perishable items, such as refrigerated or frozen goods.

TECHNICAL BARRIERS TO TRADE

Industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Ministry of Health requires a Certificate of Free Sale for product registration. In some cases, U.S. companies have satisfied the requirement by submitting documents from state or local government authorities or trade organizations. However, U.S. manufacturers cannot gain approval to sell into the Nicaraguan market if they are unable to obtain such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), which requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates as expiration dates and have destroyed products exceeding those dates, even when the product was for re-export. Nicaraguan importers of U.S. products have complained that the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers continue to work with suppliers to include expiration dates in the translated Spanish label as required by Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07.10).

SUBSIDIES

Albanisa, the joint venture of the Venezuelan and Nicaraguan state oil companies that previously imported and distributed Venezuelan petroleum, provided preferential financing to parties that agreed to export their products to Venezuela. Albanisa's business practices enriched corrupt officials of the Nicaraguan government, and were blocked by operation of law following the January 28, 2019, designation of Petroleos de Venezuela, S.A., for sanctions. Albanisa's subsidiary Banco Corporativo SA was designated for sanctions on April 17, 2019. Albanisa is reportedly involved with many other businesses in Nicaragua, including in the energy sector. Fuel distributor Distribuidor Nicaraguense de Petroleo S.A. (DNP) was

designated for sanctions on December 12, 2019 for use by members of the Ortega family for personal enrichment from non-competitive contracts with Nicaraguan government institutions. The Nicaraguan government nationalized DNP on December 14, 2019.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of 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 remains an Annex VII country (*i.e.*, a “developing country”) for the purposes of the WTO Agreement on Subsidies and Countervailing Measures. The United States will continue to work to ensure the Nicaraguan government’s compliance with its CAFTA-DR obligations.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Nicaraguan government entities, including government ministries and sub-central and state-owned entities, on the same basis as local suppliers. The anticorruption provisions in the CAFTA-DR apply, *inter alia*, to government procurement.

Law 935 (2016) requires competitive and transparent bidding procedures for all public-private initiatives and the government has established a [portal](#) through which firms can obtain information and bid on public contracts. The portal, however, is not always updated in a timely fashion.

In practice, there are significant practical hurdles that inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan government entities. Existing law provides that 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. Weak rule of law and the ability of outside actors to influence the judicial process hamper due process. The government of Nicaragua is not reliably responsive to foreign governments raising these issues.

The United States will continue to monitor Nicaragua’s government procurement practices to ensure that they are applied in a manner consistent with CAFTA-DR obligations.

Nicaragua is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Despite a strong legal framework to implement CAFTA-DR commitments on intellectual property (IP) protection and enforcement, the United States continues to be concerned with several issues in Nicaragua, including optical disc and broadcast media piracy. Also, the sale of counterfeit and pirated goods are reportedly on the rise throughout Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IP 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 IP obligations under the CAFTA-DR.

INVESTMENT BARRIERS

Weak governmental institutions, deficiencies in the rule of law, and extensive executive control can create significant challenges for those looking to invest in Nicaragua, particularly smaller foreign investors. Many individuals and entities raise concerns about the progressive increase in energy tariffs and arbitrary changes in taxes and customs in particular. The U.S. Embassy continues to hear accounts from U.S. citizens seeking redress for property rights violations. Per these accounts, government entities are not responsive, and in some cases may be complicit in urging property rights violations against legitimate property owners for political reasons. Some property owners have had to pay violators to regain possession.

In addition, investors continue to raise concerns with Law 840 (2013), which specifies that property holders whose land is expropriated or nationalized will receive compensation based on cadastral value (the tax-assessed value of a property established by the national government) rather than on the value determined by the market.

The United States will continue to monitor the situation to ensure that the Nicaraguan government fulfills its CAFTA-DR obligations.

OTHER BARRIERS

The Nicaraguan government unilaterally sets the price for all medications sold in Nicaragua. However, despite increases in taxes and changes in other market conditions, businesses report that the government has ignored all applications for price adjustments for the past two years.

Bribery and Corruption

Some U.S. firms and citizens report that government corruption, including in the judiciary, is a significant concern and constraint to successful investment in Nicaragua. Administrative and judicial decision-making appear to be inconsistent, nontransparent, and very time-consuming. Extra-judicial interests, in particular political interests, influence administrative and judicial processes. Courts frequently grant orders, called amparos, that suspend official investigatory and enforcement actions indefinitely, delays that appear intended to protect individuals suspected of white collar crime.

Investors have raised concerns that regulatory authorities are slow to apply existing laws, act arbitrarily, and often favor one competitor over another. Foreign investors report significant delays in receiving residency permits, requiring frequent travel out of the country to renew visas. Anecdotal evidence exists of customs officials reviewing social media posts and other information for evidence of anti-government rhetoric. Investors continue to express concern about arbitrariness in taxation procedures, as well as the frequency and duration of tax audits of foreign investors. The costs of these barriers vary and the Nicaraguan government is not historically responsive to U.S. government efforts to address them.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was \$1.4 billion in 2019, a 51.2 percent decrease (\$1.5 billion) over 2018. U.S. goods exports to Nigeria were \$3.2 billion, up 18.3 percent (\$492 million) from the previous year. Corresponding U.S. imports from Nigeria were \$4.6 billion, down 17.9 percent. Nigeria was the United States' 52nd largest goods export market in 2019.

U.S. exports of services to Nigeria were an estimated \$2.4 billion in 2018 (latest data available) and U.S. imports were \$531 million. Sales of services in Nigeria by majority U.S.-owned affiliates were \$921 million in 2017 (latest data available), while sales of services in the United States by majority Nigeria-owned firms were \$5 million.

U.S. foreign direct investment (FDI) in Nigeria (stock) was \$5.6 billion in 2018, a 2.5 percent decrease from 2017. There is no information on the distribution of U.S. FDI in Nigeria.

TRADE AGREEMENTS

Nigeria is a member of the Economic Community of West African States (ECOWAS). It participates in the ECOWAS free trade area and in its Common External Tariff (CET), which was slated to be fully harmonized by 2020 but is not yet complete. Nigeria has signed but not ratified the European Union-West Africa Economic Partnership Agreement (EPA). Nigeria has also signed but not yet ratified its membership in the Africa Continental Free Trade Area (AfCFTA), which entered into force on May 31, 2019, and will become operational on July 1, 2020.

IMPORT POLICIES

Tariffs

Nigeria's average Most Favored Nation (MFN) applied tariff rate was 12.1 percent in 2016 (latest data available). Nigeria's average MFN applied tariff rate was 15.7 percent for agricultural products and 11.5 percent for non-agricultural products in 2016 (latest data available). Nigeria has bound 20.1 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 120.9 percent.

Consistent with the ECOWAS CET, Nigeria applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) five percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Nigerian government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but in practice some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods, which significantly raise the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering tobacco (135 percent for cigars and cigarettes and 85 percent for tobacco and other tobacco products), rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

In October 2013, the Nigerian government announced an Automotive Industry Development Plan (NAIDP) to expand domestic vehicle manufacturing. The NAIDP imposes a 35 percent levy on automobile imports, which applies in addition to the pre-existing 35 percent tariff, for an effective total *ad valorem* duty of 70 percent. The NAIDP allows companies that manufacture or assemble cars in Nigeria to continue to import two vehicles at the old rate (35 percent tariff only) for every one vehicle produced in Nigeria.

Nontariff Barriers

Nigeria uses nontariff measures in an effort to achieve “self-sufficiency” in certain commodities. For example, in 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 December 2018, the CBN added fertilizer to the list of covered products and announced that the list could rise to as many as 50 products. In August 2019, the CBN further announced a ban on foreign exchange for milk, but without official guidance on its implementation. Representatives of U.S.-based exporters have expressed concern over the implications of a ban on milk products, if it were to include all dairy. The U.S. Government has repeatedly raised concerns regarding the foreign exchange restrictions both bilaterally and in the WTO.

Quantitative Restrictions and Import Bans

In 2014, the Nigerian government introduced a frozen fish import quota regime. The government also banned imports of catfish and tilapia species as part of the quota system. The ban does not appear to cover the *Merluccius productus* (Pacific Hake) species, and the Ministry of Agriculture entered into an agreement for a U.S. firm to start exporting Pacific Hake to Nigeria. However, the CBN’s foreign exchange restrictions include fish and, therefore, impact U.S. exports of Pacific Hake to Nigeria.

The Nigerian government continues to ban the import of nearly 50 different product categories, citing the need to protect local industries or promote health and safety. The list of prohibited imports currently includes *inter alia*: cocoa butter, powder, and cakes; pork; beef; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; nonalcoholic beverages (excluding energy drinks); bagged cement; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellent coils; sanitary plastic wares; paper board; telephone recharge cards and vouchers; textiles, apparel, footwear, travel goods; used motor vehicles more than ten years old; most types of furniture; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and certain spirits and alcohols.

Customs Barriers and Trade Facilitation

Nigerian customs practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations, lengthy clearance procedures, and corruption. These factors can sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes between Nigerian government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports.

While the government has undertaken efforts to implement access road improvement projects, traders continue to report that infrastructural limitations in and around Nigeria’s ports contribute to long queues by both trucks and ships, resulting in delays and increased costs. In August 2019, the Nigerian government closed all of the country’s land borders to the import of all goods in a reported effort to stop smuggling,

which has resulted in further congestion to seaports. (*For further information, see the Other Barriers section below.*)

Information and Communications Technology Hardware

In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the “Guidelines for Nigerian Content Development in Information and Communications Technology” (the Guidelines). The Guidelines require original equipment manufacturers (OEMs) operating in Nigeria to assemble all hardware products locally and multinational companies operating in Nigeria to source all information and communications technology (ICT) hardware locally. In addition, the Guidelines require companies to use only locally manufactured subscriber identification module (SIM) cards and to use indigenous companies to build cell towers and base stations. The United States has encouraged the Government of Nigeria to review its Guidelines and to avoid such restrictive policies.

The government periodically broadcasts these localization requirements and presses ICT companies to establish local capacity building programs, and those companies have provided explanations as to why it is infeasible to meet some of the guidelines. In June 2017, the Office of Nigerian Content Development in Information and Communications Technology distributed a letter threatening OEMs with “criminal offense” if they did not demonstrate compliance with local content guidelines on after-sales support and warranty support. To date, there are no known criminal charges filed against a firm for non-compliance.

SANITARY AND PHYTOSANITARY BARRIERS

Import bans

Nigeria continues to ban imports of beef, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the reason for the ban is the prevention of bovine spongiform encephalopathy (BSE), but the bans apply to meats from all countries, even those without reported BSE cases. Nigeria also bans the import of live and dead poultry (with the exception of day-old chicks) and poultry meat, including fresh, frozen, and cooked poultry meat, due to alleged concerns about avian influenza. These bans do not appear to have a scientific basis.

Import Certificates

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third party certifiers, and/or exporters’ national authorities, depending on the product. These certificates must attest that the product is safe for human consumption (*e.g.*, does not contain aflatoxin). However, Nigeria’s limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports in particular; and has contributed to the diversion of imports into informal channels.

GOVERNMENT PROCUREMENT

The Public Procurement Act of 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 (approximately \$7,000). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million (approximately \$7,000) and up to ₦100 million (approximately \$280,000) for goods and up to ₦1 billion (approximately \$2.8 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding.

Federal government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a “Certificate of ‘No Objection’ to Contract Award” from the BPP.

In January 2018, President Muhammadu Buhari issued Executive Order 5, which added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to indigenous professionals. Upon the release of the order, U.S.-based firms raised concerns that it specifies that the Ministry of Interior “shall desist from giving visa[s] to foreign workers whose skills are readily available in Nigeria.”

There is a local content margin of preference, which varies from project to project, but does not exceed 15 percent. In addition, Nigeria offers a preference to majority Nigerian-owned companies as long as their price is within 15 percent of a majority foreign-owned company. Foreign companies may also be subject to a local content or other localization requirement (*e.g.*, partnership with a local partner firm or joining a consortium). U.S. companies have expressed concerns about corruption and lack of transparency in procurement processes.

The Nigerian government has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. Nigeria’s National Assembly operates its own procurement process that has not been subject to BPP oversight and that has lacked transparency. Although U.S. companies have won contracts in a number of sectors, difficulties in receiving payment are common 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 require ministries and development agencies to source and procure all computer hardware only from NITDA-approved OEMs. The Nigerian Oil and Gas Industry Content Development Act also mandates a maximum quota of five percent of all positions that can be allotted to expatriates and minimum host community requirements among other local content stipulations.

Nigeria is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Nigeria has taken steps toward improving its legal framework for intellectual property (IP) protection. In 2017, Nigeria submitted its instruments of accession and ratification of four World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Beijing Treaty on Audiovisual Performances, and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. However, Nigeria has not yet amended its national laws to implement the treaties as of the end of 2019. Moreover, pirated and counterfeit goods remain widely available in Nigeria, often threatening the health and safety of consumers. Counterfeit automotive parts, pharmaceuticals, software, music and video recordings, and other consumer goods are widely available. While Nigerian officials made seven arrests stemming from anti-piracy operations in 2018, enforcement agencies lack sufficient resources and interagency cooperation to enhance enforcement of IP rights.

SERVICES BARRIERS

Nigeria imposes a cap of 40 percent on foreign investment in local insurance and reinsurance companies. Nigeria also prohibits foreign firms from participation in reinsurance of risks in the oil and gas sector.

Although the regulator may waive this prohibition, all local reinsurance capacity must be fully exhausted. Nigeria also imposes five percent mandatory reinsurance cession requirements in favor of the Africa Reinsurance Corporation and the WAICA Reinsurance Corporation.

BARRIERS TO DIGITAL TRADE

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens in Nigeria. The Guidelines further require that businesses host all government data locally unless officially exempted. These requirements raise costs for foreign businesses seeking to invest in the Nigerian market and create an intractable barrier to market entry for firms that distribute their data storage and processing globally. Further, such data localization requirements prevent Nigerian businesses from taking advantage of cloud computing services supplied on a cross-border basis.

The Guidelines also require ICT companies to use Nigerian businesses for the provision of at least 80 percent of all value-added services on their network. The Guidelines define “value-added service” vaguely, creating uncertainty for businesses seeking to comply with the measure. Though Nigeria has largely declined to enforce the Guidelines to date, periodic threats of repercussions for non-compliance remain a concern.

INVESTMENT BARRIERS

Foreign exchange restrictions have negatively impacted investment as well as trade. The measures have hampered some U.S. companies’ abilities to import finished or semi-finished goods for use in their Nigerian operations. Similarly, the CBN has on occasion restricted the repatriation of earnings, causing some businesses to reduce services in Nigeria.

While 100 percent foreign ownership of firms is generally permitted, investments in the oil and gas sector are limited to joint ventures or production-sharing agreements with domestic firms. Additionally, all foreign investors must register with the Nigerian Investment Promotion Commission.

OTHER 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.

Port Congestion, Inefficiency, and Maritime Crime

Delays caused by congestion and the poor condition of access roads, combined with corruption issues, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, Apapa in Lagos is the most expensive port in the world for shipments from the United States, due to an average delay of 30 days to clear a container ship. Lagos ports also lack adequate space, and ships often queue for days, and in some cases weeks and months, before being able to berth and discharge their contents. Nigeria estimates that it loses \$55.6 million daily because of traffic gridlock at the main port in

Lagos. In a 2015 report on the causes and implications of Nigeria's large informal economy and unrecorded trade, the United Kingdom-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 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 approvals of visas for foreign personnel, present serious challenges to the oil and gas industry.

According to stakeholders, the Act is adversely affecting a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies have observed that the Act significantly adds to the cost of doing business in Nigeria.

Corruption

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes have been great concerns to U.S. companies. U.S. firms experience difficulties in day-to-day operations due to inappropriate demands from officials for "facilitative" payments. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics. Questions also remain regarding the Nigerian justice system's capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was \$2.6 billion in 2019, a 91.5 percent increase (\$1.3 billion) over 2018. U.S. goods exports to Norway were \$3.9 billion, down 28.5 percent (\$1.5 billion) from the previous year. Corresponding U.S. imports from Norway were \$6.5 billion, down 4.2 percent. Norway was the United States' 48th largest goods export market in 2019.

U.S. exports of services to Norway were an estimated \$3.2 billion in 2018 (latest data available) and U.S. imports were \$3.3 billion. Sales of services in Norway by majority U.S.-owned affiliates were \$5.9 billion in 2017 (latest data available), while sales of services in the United States by majority Norway-owned firms were \$2.4 billion.

U.S. foreign direct investment (FDI) in Norway (stock) was \$27.9 billion in 2018, a 4.4 percent decrease from 2017. There is no information on the distribution of U.S. FDI in Norway.

TRADE AGREEMENTS

Norway, along with Iceland, Liechtenstein, and Switzerland, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway has implemented or is in the process of implementing most EU trade policies and regulations. As an EEA signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway grants preferential tariff rates to EEA members.

IMPORT POLICIES

Tariffs

Norway has continued to reduce tariffs on industrial products on a unilateral basis. Norway's average Most Favored Nation (MFN) applied tariff rate was 6.6 percent in 2018 (latest data available). Norway's average MFN applied tariff rate was 44.9 percent for agricultural products and 0.5 percent for non-agricultural products in 2018. Norway has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 20.2 percent.

Although the EEA accord does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement within the EEA framework that results in Norway applying a preferential duty on EU processed food products. The agreement covers a wide range of products, including bread and baked goods, breakfast cereals, chocolate and other candies, ice cream, pasta, pizza, soups, and sauces. Such preferential access for EU suppliers disadvantages U.S. exporters of these processed foods.

Nontariff Barriers

Tariff-Rate Quotas

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack

of predictability in tariff adjustments and insufficient advance notification of these adjustments—generally only two to five days before implementation—favor nearby European suppliers and make export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on a product’s ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

Agricultural Support

Although agriculture accounts for only 0.5 percent of gross domestic product, support provided by Norway to its agricultural producers was 60 percent of total farm receipts between 2015 and 2018, among the highest in the world according to the Organization for Economic Cooperation and Development (OECD) and more than three 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. In line with its commitments from the 2015 Nairobi WTO Ministerial Conference, Norway has adopted legislation to phase out agricultural export subsidies by the end of 2020.

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

Government Monopolies

Although U.S. market shares for wine have increased in recent years, it continues to be difficult for U.S. wine exporters to sell in the Norwegian market. The wine and spirits retail market in Norway is controlled by the government monopoly, “Vinmonopolet.” Obtaining approval to include wines and other alcoholic beverages on Vinmonopolet’s retail list is cumbersome, and Vinmonopolet’s six-month marketing and product plans for selecting and purchasing wines significantly constrain competitive supply. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas; otherwise, they are dropped from the basic inventory list. Existing wine suppliers benefit from exposure in Vinmonopolet stores, and the market entry challenges for U.S. wines are exacerbated by the strict ban on advertising alcoholic beverages.

SANITARY AND PHYTOSANITARY BARRIERS

Transparency

As a member of the EEA, Norway applies certain EU sanitary and phytosanitary (SPS) regulations, with the exception of regulations relating to plant health. As a Member of the WTO, Norway is obligated to notify proposed SPS measures to the WTO and take comments into consideration prior to finalizing its SPS measures. In 2019, Norway did not notify any measures to the WTO SPS Committee.

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 biotechnology crops and using biotechnology feed

for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products, and accordingly to open its market to U.S. exports of such products.

Beef and Beef Products

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that this practice poses any risk to human health.

GOVERNMENT PROCUREMENT

Norway is a Party to the WTO Agreement on Government Procurement (GPA). U.S.-based companies are allowed to bid on public tenders covered by the GPA. U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders and a lack of adequate time to bid. Tenders in Norway can be unpredictable and non-transparent, which can result in the suboptimal use of innovative medicines.

INTELLECTUAL PROPERTY PROTECTION

Although recent legislative developments, enforcement actions, and the increased availability of authorized copyright-protected works online have had a positive effect on reducing Internet piracy, some private sector stakeholders suggest that Norway needs to continue its efforts to combat online piracy, such as by clarifying the circumstances under which Internet Service Providers are required to provide information to authorities or to right holders about the identity of subscribers that can be linked to infringements. Norway passed a modernized Copyright Act in 2018. Right holders appreciate that the general extended collective license (ECL) provisions in the new law contain mechanisms for right holders to opt out of ECLs. However, some concerns remain that the provisions do not contain sufficient mechanisms or requirements to notify right holders of proposed ECLs and the possible application of an ECL to their work. A general ECL provision should include notice to affected right holders, both before and after a collecting society negotiates an agreement that will apply to a certain class of works and/or a class of right holder. A pre-agreement notification mechanism is important so that right holders may present views on whether the legal requirements for the ECL have been met. A post-agreement notification mechanism gives right holders immediate opportunity to exercise their opt-out right, should they wish. This would ensure more predictability for right holders about how their rights are protected and monetized.

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 \$778 million in 2019, a 31.7 percent decrease (\$362 million) over 2018. U.S. goods exports to Oman were \$1.9 billion, down 19.8 percent (\$478 million) from the previous year. Corresponding U.S. imports from Oman were \$1.2 billion, down 9.1 percent. Oman was the United States' 62nd largest goods export market in 2019.

U.S. exports of services to Oman were an estimated \$532 million in 2018 (latest data available) and U.S. imports were \$185 million. Sales of services in Oman by majority U.S.-owned affiliates were \$468 million in 2017 (latest data available). There were no sales of services in the United States by majority Oman owned firms in 2017.

U.S. foreign direct investment (FDI) in Oman (stock) was \$1.6 billion in 2018, a 11.7 percent decrease from 2017.

FREE TRADE AGREEMENTS

The United States-Oman Free Trade Agreement

Under the United States–Oman Free Trade Agreement (FTA), Oman provides duty-free access to all U.S. exports. The FTA also contains comprehensive commitments for services and investment.

IMPORT POLICIES

Taxes

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—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. Oman is not expected to apply the VAT in 2020.

Nontariff Barriers

Import Licensing

Companies that import goods into Oman must register with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as poultry, livestock, alcohol, firearms, narcotics, and explosives, requires a special license. Media imports are subject to review for potentially offensive content and may be subject to censorship. Importation of some goods for personal consumption do not require an import license.

Customs Barriers and Trade Facilitation

Companies importing U.S. goods occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the United Arab Emirates, inconsistent application of requirements by the Royal Oman Police Customs Directorate (ROP customs authority) for origin marking, segregation, and other documentation, and the lack of any published official guidance in these areas.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

Sanitary and Phytosanitary Barriers

Agricultural stakeholders have raised concerns regarding import requirements in Oman involving certification for pesticide residues as well as radiation attestations for agricultural products. These regulations are far more restrictive than U.S. food safety controls for protecting human and animal health.

GOVERNMENT PROCUREMENT

The FTA requires covered government agencies and entities in Oman to conduct procurements covered by the agreement in a fair, transparent, and nondiscriminatory manner. Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. However, Oman may not apply such price preferences to tenders offering goods and services from the United States in procurement covered by the FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants. Suppliers are requested to be present at the opening of tenders, and interested persons may view the process on the Tender Board's website. Some U.S. companies report that award decisions are

delayed, sometimes for years, or the tendering is reopened with modified specifications and, typically, short deadlines.

Oman is an observer to the WTO Committee on Government Procurement. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO Agreement on Government Procurement in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY PROTECTION

Oman committed in the FTA to provide strong intellectual property (IP) protection and enforcement. Oman revised its IP laws and regulations to implement its FTA commitments and acceded to several international IP treaties.

While IP laws in Oman are strong, the Omani system places a burden on right holders to perform their own monitoring and enforcement through legal actions in the courts. U.S. stakeholders have experienced difficulty getting the responsible government agencies to take enforcement action. While the Ministry of Commerce and Industry has set up a new enforcement group, law firms in Oman point to continued confusion about which agency is responsible for investigating different types of IP violations.

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

SERVICES BARRIERS

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Professional Services

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. U.S. ownership in a legal services firm is limited to no more than 70 percent.

BARRIERS TO DIGITAL TRADE

The government of Oman, operating through its government majority-owned telecommunications service providers and through its telecommunications regulator, periodically slows or blocks access to certain over-the-top services such as Voice over Internet Protocol services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

In 2019, Oman banned foreign ownership of real estate and land in some governorates and sensitive areas the government deems necessary to restrict under Royal Decree 29/2018. However, Oman has allowed the establishment of real estate investment funds (REIF) in order to encourage new inflows of capital into Oman's property sector. The regulations permit foreign investors, as well as expatriates in Oman, to own shares in REIFs. Although U.S. investors are permitted to purchase freehold property in designated residential developments, businesses must adhere to more restrictive guidelines when acquiring real estate for commercial purposes.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was \$1.3 billion in 2019, a 51.2 percent increase (\$440 million) over 2018. U.S. goods exports to Pakistan were \$2.6 billion, down 8.0 percent (\$227 million) from the previous year. Corresponding U.S. imports from Pakistan were \$3.9 billion, up 5.7 percent. Pakistan was the United States' 57th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Pakistan (stock) was \$386 million in 2018, a 25.5 percent decrease from 2017.

TRADE AGREEMENTS

Pakistan and the United States signed a Trade and Investment Framework Agreement (TIFA) in 2003, and Pakistan has Free Trade Agreements (FTAs) with China, Indonesia, Iran, Malaysia, Mauritius, and Sri Lanka. Pakistan is also a signatory of the South Asian FTA and the Afghanistan-Pakistan Transit Trade Agreement. Pakistan is negotiating FTAs with Turkey and Thailand. Its recently re-negotiated FTA with China went into force on December 1, 2019.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Pakistan's average Most Favored Nation (MFN) applied tariff rate was 12.1 percent in 2018 (latest data available). Pakistan's average MFN applied tariff rate was 13.5 percent for agricultural products and 11.9 percent for non-agricultural products in 2018 (latest data available). Pakistan has bound 98.7 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 60.9 percent. For agricultural products, the average WTO bound rate is 96.2 percent. Tariffs are lower for non-agricultural products, with an average WTO bound rate of 55.1 percent.

Pakistan groups tariff rates into categories by levels of domestic market protection. Between 2013 and 2017, Pakistan gradually reduced the number of tariff categories from seven to four, and reduced the maximum tariff category rate from 30 percent to 20 percent. The current general tariff categories are 3 percent, 11 percent, 16 percent, and 20 percent. However, individual tariff rates within each category may vary. The weighted average basis of all applied tariffs within a category is equal to the category rate, and some individual tariff rates may still be significantly higher than the category rate listed. Most individual tariff rates range from zero percent to 35 percent; however, there are higher tariffs on beverages (90 percent) and transport equipment (100 percent).

Despite the reduction in tariff categories and tariff rates in the last six years, Pakistan continues to protect several key local industries, such as automobiles and finished goods, by imposing high tariff rates and in some cases additional customs and regulatory duties. On July 1, 2019, Pakistan imposed additional customs duties of 4 percent and 7 percent on tariff categories of 16 percent and 20 percent respectively, which generally include finished products. Additionally, Pakistan imposes higher tariff rates (35 percent) on imports of automobile parts that compete with domestically manufactured products than on imports of automobile parts with no domestic competition (20 percent). In March 2016, the Ministry of Industries and Production adopted Pakistan's Automotive Development Policy 2016-2021, which offers various

incentives, including tax holidays to new entrants, aimed at attracting U.S. and European automakers to establish automotive manufacturing units in Pakistan. However, in practice foreign manufacturers have not been able to obtain these incentives, and there have been no new entrants to the Pakistani automobile manufacturing sector.

Pakistan also grants sector- and product-specific duty exemptions, concessions, and protections through the promulgation of statutory regulatory orders (SROs). SROs can be issued without stakeholder consultations or adequate time to allow for full compliance. A list of SROs, and other trade policy and regulatory documents is available from Pakistan's [Federal Board of Revenue](#).

Pakistan previously pledged to eliminate the use of SROs through an International Monetary Fund (IMF) program entered into in 2013 and completed in September 2016. However, many SROs remain, and Pakistan has not provided a concrete timeline for their removal. In January 2016, Pakistan eliminated the FBR's authority to issue new SROs and transferred the authority to approve all SROs to the Economic Coordination Committee (ECC), a cabinet-level body in the Prime Minister's office.

SRO 1265, issued in October 2018, imposed a "regulatory duty" on the import of 570 items and was intended to slow import growth. Although this SRO focused on "luxury goods" and consumables, and the overall impact on U.S. exporters appears to be limited, a number of U.S. companies have raised concerns with the U.S. Government about duty increases on inputs that would raise production costs and the price of finished goods manufactured in Pakistan.

Pakistan also protects two key agricultural commodities—wheat and sugar—through the imposition of regulatory duties announced in SROs.

U.S. importers have raised concerns about SRO 420, issued in 2014, which 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 claimed since 2015 that the tax on domestically produced products will be increased to 17 percent, but no change has been made in this regard.

Nontariff Barriers

To import goods in general, traders are required to have a National Tax Number (NTN) certificate (issued by the FBR on filing of an application and one attested copy of the importer's National Identity Card), a Pakistani bank account, sales tax registration, and a membership certificate in a chamber of commerce and industry or any relevant trade association of Pakistan.

Import Restrictions

Pakistan permits the import of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Imports of waste, parings, and scrap of polyethylene and polypropylene must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Pakistan restricts the import of second-hand vehicles, watercraft, trawlers, aircraft, and related parts and equipment unless they meet specified conditions, such as prior approval or clearance, certain testing arrangements, or other procedural requirements. While Pakistan maintains that these requirements are for health, safety, security, and environmental reasons, the requirements appear to limit the supply of products into the country.

Import Licensing

Pakistan does not require import licenses, except for sensitive goods. The Commerce Ministry makes available the [list of goods](#) for which licenses are required.

Customs Barriers and Trade Facilitation

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan. This reported inconsistency has affected both U.S. and other foreign companies. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Rule 391 places the responsibility of including such documents and imposes liability for failure to comply on the owner of the goods and the carrier.

Such rules could present compliance challenges for companies whose global supply chains require the use of intermediaries, re-invoicing, or the storage of goods at various points during transit from production to the end user. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. FBR officials have stated that customs officials have the discretion to impose penalties, while recognizing the variety in invoicing systems from different companies. While the Pakistani government has shown a willingness to provide a solution for U.S. companies, and the U.S. government has worked with the FBR to that end, these rules remain formally in place and Pakistan customs could exercise its discretion under this authority at any time.

Pakistan notified its customs valuation legislation to the WTO in May, 2001 but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pakistan's packaging requirements normally follow Codex Alimentarius Commission (Codex) rules. Pakistan generally accepts packaging material if allowed in the exporting country. A notable exception, however, is vegetable oil. Pakistan requires refined vegetable oil be imported in bulk for re-packaging, a requirement aimed at encouraging local packaging and saving foreign exchange.

In July 2019, Pakistan imposed additional requirements for product labels, requiring information on ingredients, usage and expiration dates in Urdu and English. The new requirements in the SRO 237 also mandated that each food and beverage related shipment include a halal certificate and prohibited the use of stickering, overprinting, or stamping to meet the new requirements.

Sanitary and Phytosanitary Barriers

Pakistan has not fully recognized the United States' negligible risk status for bovine spongiform encephalopathy (BSE). In February 2015, Pakistan established import requirements for the import of live cattle from the United States, which in 2013 received a negligible risk status for BSE in accordance with World Animal Health Organization guidelines. On March 2, 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, representing the first shipment since 1999. Since then, Pakistan

has imported additional shipments of U.S. live cattle. However, Pakistan continues to ban some U.S. beef and beef products, ostensibly over BSE concerns. The United States continues to work with the Ministry of Commerce and the Ministry of National Food Security and Research to fully open the market for U.S. beef.

The government of Punjab has established trait-based semen import requirements that would limit market access to imported semen for dairy and beef producers. The federal and provincial governments are reviewing the matter; no timeframe has been set for its resolution.

In 2005, Pakistan enacted a biosafety law establishing biosafety committees that govern the manufacture, research, import, export, and sales of genetically modified plant, animals, microorganisms, and cells. As of the end of 2019, Pakistan had not yet established rules and administrative protocols to implement the 2005 rules, and, as a result, requirements for the certification and importation of genetically engineered food and agricultural products remain unclear. National regulatory bodies are in different stages of promulgating rules and administrative procedures governing agricultural biotechnology. Once complete, the resulting rules and administrative procedures will need to be harmonized in order to operate effectively and enable companies to legally register genetically engineered products for food, feed and processing purposes.

SUBSIDIES

On January 10, 2017, Pakistan announced another Trade Enhancement Initiative, a PKR 180 billion (approximately \$1.7 billion) incentive package designed to reverse Pakistan's declining exports.

GOVERNMENT PROCUREMENT

The Public Procurement Regulatory Authority is an autonomous body responsible for prescribing and monitoring public sector procurement regulations and procedures in Pakistan. International tender notices must be publicly advertised, and sole source contracting tailored to company-specific qualifications is prohibited. There are no formal "buy national" policies in Pakistan. However, political influence on procurement awards, allegations of public corruption, lack of transparency, judicial intervention, and long delays in bureaucratic decision-making are commonly cited as impediments to government procurement. *(For further information, see the Other Barriers section below.)*

Since 2014, Pakistan has begun to rely more on technical qualifications in its procurements, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency uses the U.S. bid as a basis for further negotiations with other competitors, rather than accepting the lowest-priced and technically superior bid as outlined in bidding guidelines. For example, this has occurred with competing Chinese firms. Other companies believe the government of Pakistan uses lower bids as an effort to negotiate lower prices with the United States and the EU to procure high quality goods.

Pakistan is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2015.

INTELLECTUAL PROPERTY PROTECTION

Pakistan remained on the Special 301 Watch List in 2019. 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 (IP) issues, including with respect to: (1) U.S.-Pakistan bilateral engagement, especially under the TIFA; (2) the establishment of IP

Tribunals; (3) taking steps to implement rules and establish a seed protection registry; (4) public awareness campaigns on IP protection; (5) the participation of the Pakistan Intellectual Property Office (IPO) with the U.S. Patent and Trademark Office (USPTO) in a series of digital video conferences devoted to reviewing IP legislation; and (6) ongoing engagement with stakeholders.

Despite these improvements, as the 2019 Special 301 Report noted, Pakistan must do significantly more to improve IP protection. For example, in relation to the establishment of IP tribunals, litigants with experience in these courts raise concerns over lack of capacity, consistency, and insufficient penalties. Aligning Pakistan's IP laws, regulations, and enforcement regimes with international standards continues to be an area for further progress. Moreover, counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals, printed materials, optical media, digital content, and software. The United States also maintains longstanding concerns related to patents, copyrights, trademarks, customs enforcement, and protection against the unfair commercial use and disclosure of test and other data generated to obtain marketing approval for pharmaceutical products.

SERVICES BARRIERS

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. FDI is limited to 49 percent in each bank. Foreign and local banks must submit an annual branch expansion plan to the SBP for approval based on financial factors and the needs of the local population. All banks are required to open 20 percent of their new branches in small cities, towns, and villages.

Insurance Services

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. The government has discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet up to 65 percent of their re-insurance needs; the remainder of reinsurance must be ceded locally.

BARRIERS TO DIGITAL TRADE

Pakistan is developing a new personal data protection law. Draft versions of the bill have included a requirement to store a copy of all personal data on servers within the territory of Pakistan and a prohibition on the cross-border transfer of all "critical" personal data. The scope of "critical" personal data is not defined. Such data localization requirements are ineffective at enhancing the protection of personal data, and they significantly increase costs for firms that store and process data outside Pakistan. For smaller foreign firms that cannot afford redundant computing facilities within Pakistan, these requirements could make it impossible to operate profitably in Pakistan.

The government of Pakistan is in the process of drafting or considering new regulations related to social media, electronic commerce, and over-the-top (OTT) content services. U.S. industry has expressed concerns regarding provisions of these regulations that would create significant barriers to entry and continued operation, including the need to comply with burdensome registration and licensing requirements, content restrictions, and requirements that companies maintain a physical address in Pakistan, as well as possible data localization requirements.

Pakistan periodically blocks access to Internet-based services for hosting content deemed to be blasphemous or immoral or on grounds that such services can be used to undermine national security. In 2019, Pakistan partially suspended access to mobile data and certain online services in major cities several times. However, Pakistan did not block online services for the entire country as it did 11 times in 2018. Such blockages undermine the value of Internet services to users and impose costs on local firms that depend on these services for their business.

INVESTMENT BARRIERS

Pakistan generally permits foreign investment without equity caps, except in certain sectors such as agriculture, aviation, banking, defense, media, insurance, and railways. In an effort to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of \$100,000 for the first payment, with subsequent payments capped at five percent of net sales for the next five years.

Taxes

Pakistan has one of the lowest tax-to-gross domestic product (GDP) ratios in the world, approximately 11.6 percent in 2019. Pakistan relies heavily on multinational corporations for a significant portion of the revenue generated by tax collection. Foreign investors in Pakistan regularly report that both federal and provincial tax regulations are difficult to navigate. The World Bank's Doing Business 2020 report notes that companies pay 34 different taxes (a reduction of 13 taxes from the previous year), compared to an average of 26.7 in other South Asian countries. In addition, companies frequently lament the lack of transparency in the assessment of taxes.

In April 2018, the Ministry of Finance announced a plan to reduce the corporate tax rate from 30 percent to 25 percent by 2023. Pakistan reduced the corporate tax rate by one percent to 29 percent for the 2018-2019 fiscal year but did not reduce the rate further for the 2019-2020 fiscal year.

Improving tax collection is a key focus of the IMF's Extended Fund Facility (EFF) for Pakistan, agreed to in July 2019. As part of the IMF program, Pakistan should increase its tax revenues to PKRs 5.5 trillion (approximately \$35.2 billion) in fiscal year 2020. Although Pakistan is taking steps to broaden the country's tax base, the government has continued to lean on large companies, especially international firms, to increase revenues. U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities. While small and medium-sized U.S. companies have not seen their tax burden increase as substantially as larger multinational corporations, they have expressed concern that many of their local competitors still do not pay taxes at all. The U.S. Government has engaged Pakistani officials on issues involving unfair taxation and continues to reinforce the importance of Pakistan broadening its tax base.

In 2015, Pakistan imposed a "super tax" for the rehabilitation of internally displaced persons, on top of other taxes. The super tax was initially four percent for banking companies and three percent for non-banking companies with income exceeding PKR 500 million (approximately \$3.2 million). The U.S. Government and U.S. industry expressed concerns about the super tax. In April 2018, the Ministry of Finance announced the government would reduce the super tax by one percentage point every year until eliminating it for non-bank companies in 2020 and for banks in 2021. The current government carried out the first step in this process by reducing the tax by one percent for both banks and non-banks in the September 2019 mini-budget. However, the fiscal year 2020 budget does not contain any further reduction.

Foreign investors are allowed in all sectors except arms, ammunition, high explosives, radioactive substances, securities, currency, and consumable alcohol. There are no restrictions or mechanisms that exclude U.S. investors specifically.

As envisioned by the 2013 Investment Policy, the 2017 Companies Act eliminated minimum initial capital investment requirements across sectors so that no minimum investment requirement or upper limit on the share of foreign equity is allowed, with the exception of the airline, banking, agriculture, and media sectors. Foreign investors in the services sector may retain 100 percent equity, subject to obtaining permission (*i.e.*, a “no objection” certificate or license) from the concerned agency and fulfilling the requirements of any applicable sectoral policy. In the education, health, and infrastructure sectors, 100 percent foreign ownership is allowed. In the agricultural sector, the threshold is 60 percent, with an exception for corporate agriculture farming, where 100 percent ownership is allowed. Small-scale mining valued at less than PKR 300 million (approximately \$2.6 million) is restricted to Pakistani investors.

Pakistan does not restrict payment of royalties or technical fees for the manufacturing sector but does impose restrictions on other sectors, including a \$100,000 limit on initial franchise investments and a cap on subsequent royalty payments of five percent of net sales for five years. Royalties and technical payments are subject to a 15 percent income tax and subject to remittance restrictions listed in Chapter 14, section 12 of the [SBP Foreign Exchange Manual](#). The tourism, housing, construction, and information and communications technology sectors have been granted “industry status,” making them eligible for lower tax and utility rates compared to “commercial sector” enterprises, including banks and insurance companies.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, there have been reports of U.S. and other companies facing bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government’s focus on maintaining foreign currency reserves. One U.S. company has been seeking to repatriate assets from the sale of a local subsidiary for five years. Despite repeated assurances from Ministry of Finance and other senior officials, the funds had not been allowed to be remitted by the Pakistani bank at which they are held as of the end of 2019.

The 18th Amendment to Pakistan’s constitution, passed in 2010, gives the country’s provinces the authority to levy taxes and regulate some sectors of the economy. While intended to provide provinces with greater autonomy, the move has also complicated Pakistan’s investment climate, as the delineation of federal and provincial responsibilities is often unclear.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. The World Bank ranked Pakistan 156 out of 190 countries in enforcing contracts in its 2020 Ease of Doing Business report. Parties pursuing legal remedies in the Pakistani civil judicial system may face significant delays and unpredictable outcomes in the country’s overloaded courts. Lack of enforcement of court rulings is also a significant problem.

OTHER BARRIERS

Corruption

Corruption and a weak judicial system have been cited as substantial disincentives to foreign investment in Pakistan. Transparency International ranked Pakistan 117 out of 180 countries in its Corruption Perceptions Index 2018. The country’s federal anticorruption agency, the National Accountability Bureau, was established under President Musharraf. However, the 18th Amendment to the Constitution declares all acts and laws made by the President to be without lawful authority. In 2009, Pakistan’s Supreme Court directed

the National Assembly to pass new legislation to establish it formally. While the NAB continues to function, there is still a legislative gap in its authority, which is causing confusion.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$7.3 billion in 2019, a 13.3 percent increase (\$851 million) over 2018. U.S. goods exports to Panama were \$7.7 billion, up 12.9 percent (\$883 million) from the previous year. Corresponding U.S. imports from Panama were \$452 million, up 7.5 percent. Panama was the United States' 35th largest goods export market in 2019.

U.S. exports of services to Panama were an estimated \$1.7 billion in 2018 (latest data available) and U.S. imports were \$1.5 billion. Sales of services in Panama by majority U.S.-owned affiliates were \$1.3 billion in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Panama (stock) was \$5.1 billion in 2018, a 7.3 percent increase from 2017. U.S. direct investment in Panama is led by nonbank holding companies, wholesale trade, and mining.

TRADE AGREEMENTS

United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. The TPA includes important disciplines relating to market access, customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

The first tariff reduction under the TPA took place upon entry into force on October 31, 2012, and subsequent tariff reductions occur on January 1 of each year. The ninth round of tariff reductions took place on January 1, 2020. The TPA tariff rates are applied to U.S. products that meet the TPA's rules of origin. All U.S. consumer and industrial products will be duty free as of January 1, 2021. 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-year to 12-year period following the entry into force of the TPA, with duties on the most sensitive products phased out over 15 years to 20 years. The TPA created expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas, which provided immediate duty-free access for specific quantities of certain agricultural products. This access has grown as quotas have increased and over-quota duties have been phased out over the course of the applicable implementation period.

Taxes

All goods and most services sold in Panama, except for foods and feeds, are subject to a seven percent value-added tax (ITBMS). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges. The ITBMS is higher for cigarettes

and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using appropriate documents, are exempt from the ITBMS.

Nontariff Barriers

Import Licensing

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, "Panama Emprende." Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

SANITARY AND PHYTOSANITARY BARRIERS

The Panamanian Food Safety Authority (AUPSA) was established by Decree Law 11 in 2006 to issue science-based sanitary and phytosanitary import policies for agricultural and food products entering Panama. On October 28, 2019, Panama's Cabinet Council approved a draft bill to eliminate AUPSA, a campaign promise by newly elected President Cortizo. The AUPSA does not have regulatory authority over domestically produced products, but the prospective new entity that could replace AUPSA, the National Service for Food Export and Import Procedures (SENTA), if ultimately established, would likely have responsibility over both imports and exports. The United States will monitor the development of the draft bill to ensure that U.S. products are treated appropriately.

GOVERNMENT PROCUREMENT

Panama is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since September 1997. The TPA contains disciplines on government procurement.

Procurement historically has presented barriers to trade in Panama. The Cortizo administration has publicly committed to ensuring greater transparency in the award of government tenders.

INTELLECTUAL PROPERTY PROTECTION

In 2012, Panama updated its legislative framework in order to implement the requirements of the TPA, which called for improved standards for the protection and enforcement of a broad range of IP protections. These included enhanced protections for patents, trademarks, undisclosed test or other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, digital copyrighted products such as software, music, text, and videos, and other measures to deter piracy and counterfeiting. Panama still must develop a system for Internet service provider notice-and-takedown procedures and pre-established damages for copyright infringement and trademark counterfeiting. While challenges remain, for example in the areas of trademarks as well as pirated and counterfeit goods, the United States continues to engage closely with Panama to ensure the effective implementation of all TPA obligations.

SERVICES BARRIERS

Resolution 055-2016, issued by AUPSA and the National Norms Administration states that imports into Panama using postal or courier delivery services (private or public) of foods and cosmetics for personal use

shall not exceed three transactions in a one year period per individual purchaser. The United States is monitoring these activities and urging Panama to avoid unnecessary restrictions on trade.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, U.S. investors and individual property holders have raised concerns about property disputes and land titles. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Although Panama enacted a law in 2009 (Law 80) that attempted to address the lack of titled land in certain parts of the country, some of the decisions taken by the National Land Authority have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes.

OTHER BARRIERS

Bribery and Corruption

President Cortizo, who took office on July 1, 2019, made a campaign promise to restore the country's international image by addressing corruption in all levels of government. However, corruption reportedly continues to be a systemic challenge in Panama at all levels of government, including in the judicial system.

Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention Against Corruption in 1998. Concerns remain regarding the competence and independence of the judicial system, based on certain court decisions, and transparency in all branches of government. 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 \$2.0 billion in 2019, a 8.0 percent decrease (\$170 million) over 2018. U.S. goods exports to Paraguay were \$2.1 billion, down 6.2 percent (\$139 million) from the previous year. Corresponding U.S. imports from Paraguay were \$162 million, up 23.5 percent. Paraguay was the United States' 61st largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Paraguay (stock) was \$148 million in 2018, a 17.3 percent decrease from 2017.

IMPORT POLICIES

Tariffs

Paraguay's average Most Favored Nation (MFN) applied tariff rate was 9.8 percent in 2018 (latest data available). Paraguay's average MFN applied tariff rate was 10 percent for agricultural products and 9.7 percent for non-agricultural products in 2018 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 33.5 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 11.5 percent (April 2019 data).

Under a July 16, 2015 MERCOSUR Common Market Council (CMC) decision, each MERCOSUR member is permitted to maintain a limited number of exceptions to the CET for an established period. Paraguay was permitted to maintain a list of 649 exceptions to the CET until December 31, 2019. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the [official website](#) of MERCOSUR.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled. The MERCOSUR CMC moved toward the establishment of a Customs Union with its approval of a Common Customs Code (CCC) in August 2010 and a December 2010 plan to eliminate the double application of the CET within MERCOSUR. All MERCOSUR members must ratify the CCC for it to take effect, but as of December 2019, only Argentina has done so. In Paraguay, the CCC is still pending approval by the Congress.

Nontariff Barriers

Import Bans

Paraguayan law prohibits the importation of used clothing, as well as imports of automobiles older than 10 years. With respect to automobiles, from 2011 to 2018 the Supreme Court ruled in 82 instances that the law banning used automobiles was unconstitutional, and allowed the 82 importers which filed cases to continue importing automobiles older than 10 years. Other potential importers were not covered by these

cases, and no new importers have been included since 2018. Recent commitments by Paraguay regarding the automotive trade within Mercosur may affect trade in used automobiles older than 10 years.

Import Restrictions

Seasonal restrictions on some agricultural products (*e.g.*, tomatoes, bell peppers, and onions) are sometimes implemented to protect local producers.

Import Licensing

Paraguay requires import licenses on personal hygiene products, cosmetics, perfumes and toiletries, textiles and clothing, shoes, insecticides, agrochemicals, soy grains, barbed wire, wire rods, and steel and iron bars. Licensing is non-automatic and requires review by the Ministry of Industry and Commerce. Imports of personal hygiene products, cosmetics, and perfumes and toiletries also require a health certification and therefore must undergo a review by the Ministry of Health. The import license process usually takes 10 days, but for goods that require a health certification, it can take up to 30 days. Once issued, the health certification is valid for only 30 days, and imports must therefore be made within this 30-day window. This can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to these delays, importers may need to reapply for an import license or health certification.

Customs Barriers and Trade Facilitation

Paraguay requires that specific documentation for each import shipment (*e.g.*, commercial invoice, 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 for U.S. exporters and impose an additional cost ranging from \$2 to \$30 per document.

Paraguay also requires all companies operating within its borders to contract the services of a customs broker. Customs broker fees are standardized by Paraguayan law.

Paraguay notified its customs valuation legislation to the WTO in April 2004, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

GOVERNMENT PROCUREMENT

Paraguay's Public Contracting Law stipulates that all public contracting at the national and local levels with a value in excess of approximately \$6,000 must be done via the National Directorate for Public Contracts. Foreign firms can bid directly on tenders deemed "international", but bids on "national" tenders can only occur through the foreign firms' local legal agents or representatives. Paraguayan law gives preference to locally produced goods and services (defined as a good with at least 40 percent of inputs from Paraguay or a service produced using Paraguayan labor at a threshold of 70 percent) in public procurements open to foreign suppliers, even if the domestic good is up to 20 percent more expensive than the imported good. The law also requires 25 percent minimum Paraguayan labor for construction projects. Paraguay's public procurements historically have been associated with corruption allegations, although the government is making efforts to enhance transparency and accountability through the government's online procurement system and more user-friendly modules.

Paraguay is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2019.

INTELLECTUAL PROPERTY PROTECTION

Paraguay returned to the Special 301 Watch List in 2019. The United States and Paraguay signed a Memorandum of Understanding (MOU) on intellectual property (IP) rights in June 2015, under which Paraguay committed to take specific steps to improve its IP rights protection and enforcement environment. The MOU also facilitates bilateral cooperation in which the United States supports, as appropriate, Paraguay's efforts to strengthen the legal protection and enforcement of IP rights.

Since the 2015 MOU has been in force, the National Directorate of Intellectual Property (DINAPI) has made efforts to improve administrative activities and some enforcement efforts, but other issues continue to plague the market for U.S. firms that rely on IP rights protection. For example, U.S. firms remain concerned about the lack of coordinated enforcement against piracy and counterfeiting under the criminal code, particularly in Ciudad del Este. Other concerns include: (1) judicial inefficiency and delays in IP rights cases; (2) lack of protection against unfair commercial use and unauthorized disclosure of, and reliance on, undisclosed test or other data submitted to the government by agrochemical or pharmaceutical companies for marketing approval; (3) the reported use of unlicensed software by offices within the Paraguayan government; and (4) the theft of for-pay television signals. On December 19, 2019, DINAPI announced the establishment of an interagency coordination center responsible for providing a unified government response to IP violations.

INVESTMENT BARRIERS

Under Paraguayan law, foreign companies must demonstrate "just cause" to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and fines may result if a court determines that the foreign company ended the relationship with its distributor without first having established that such "just cause" exists. This requirement often leads to expensive out-of-court settlements. The law has impeded foreign investment because of concerns that Paraguayan companies may unreasonably threaten expensive litigation.

Judicial uncertainty and corruption mar Paraguay's investment climate. Many investors find it difficult to adequately enforce contracts and are frustrated by lengthy bureaucratic procedures. The government of Paraguay has taken steps to increase transparency and accountability, including the passage of its Access to Information Law, but corruption and impunity continue to hamper the investment climate.

Although Paraguay offers unlimited repatriation of capital, it levies a 15 percent tax on that capital.

PERU

TRADE SUMMARY

The U.S. goods trade surplus with Peru was \$3.5 billion in 2019, a 92.9 percent increase (\$1.7 billion) over 2018. U.S. goods exports to Peru were \$9.7 billion, down 0.4 percent (\$37 million) from the previous year. Corresponding U.S. imports from Peru were \$6.1 billion, down 22.1 percent. Peru was the United States' 29th largest goods export market in 2019.

U.S. exports of services to Peru were an estimated \$3.3 billion in 2018 (latest data available) and U.S. imports were \$2.1 billion. Sales of services in Peru by majority U.S.-owned affiliates were \$1.9 billion in 2017 (latest data available), while sales of services in the United States by majority Peru-owned firms were \$2 million.

U.S. foreign direct investment (FDI) in Peru (stock) was \$6.4 billion in 2018, a 0.5 percent increase from 2017. 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 virtually 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. 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.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

All duties for PTPA-originating U.S. consumer and industrial goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with its PTPA commitments, Peru has ceased applying its price band system to U.S. agricultural products.

Taxes

A 40 percent excise tax applies to imports of used cars and trucks, up from 30 percent before 2018, except for those fueled by either natural gas or bi-fueled by natural gas and gasoline, which are subject to a 10 percent excise tax. Used cars or trucks that undergo refurbishment in an industrial center in the south of the country (those located in Ilo, Matarani, or Tacna) are subject to a 40 percent excise tax after importation unless the units are switched to either natural gas or bi-fueled units, which are then subject to the 10 percent excise tax.

Per Supreme Decrees No. 104-2004-EF and No. 092-2013-EF, Peru levies a specific 1.50 Peruvian Nuevo Sol (PEN) per liter excise tax (ISC) on domestically produced Pisco, while domestically produced spirits other than Pisco and imported distilled spirits face a higher specific or *ad valorem* ISC based on alcohol content (3.40 PEN per liter or 40 percent *ad valorem* for beverages containing 20 percent or more alcohol by volume). Given the higher effective tax rate, U.S. and other imported distilled spirits products are at a competitive disadvantage to Pisco in the Peruvian market.

Nontariff Barriers

Peru has eliminated many of its nontariff barriers and, in accordance with its PTPA commitments, subjects remaining measures, including subsidies, to additional disciplines.

Peru currently restricts imports of certain used goods, including clothing and shoes (except as charitable donations), medical devices (except by individual physicians for their own use), tires, cars over five years old, vehicles with more than eight seats and a gross weight over five tons, and trucks more than two years old weighing more than 12 tons.

Peru's registration and marketing approval processes for pharmaceuticals and medical devices remain slow, hampering market access.

The express shipments industry has expressed concerns over policies that appear to disproportionately penalize discrepancies on the manifest for low value shipments. Express delivery managers are subject to criminal penalties for discrepancies in the value of invoices of low value shipments. Express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements for “Unhealthy” Prepackaged Food Items

The “Healthy Food Promotion Act for Children and Adolescents” (Law No. 30021), and its 2017 implementing regulations published in Supreme Decree No. 017-2017-SA, establish a mandatory front-of-pack warning statement on food labels for pre-packaged foods and beverages that surpass thresholds set by Peru for sugar, sodium, and saturated fats, and for all food products that contain trans-fats. The Act also establishes limitations on advertising and promoting such food and beverage products to children and adolescents, which include restrictions on the promotion, advertising, and sale of these products in or around schools.

In September 2017, Peru notified its Manual on Health Warnings, Prepared Pursuant to the Regulations Implementing Law No. 30021 to the WTO Technical Barriers to Trade (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 June 2018, Peru published the Manual in its federal register. Manufacturers will be permitted to use temporary stickers to comply with the Manual for 12 months starting June 2019 before needing to use packaging that conforms to the Manual starting June 2020.

While supportive of Peru’s public health objective of reducing obesity and related non-communicable diseases, the United States has a number of questions and concerns with Peru’s approach. In 2020, 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 biodiversity. 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. Peru has never notified to the WTO Law No. 29811 or its 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 2019. The United States also has raised its concerns in a number of discussions with business associations.

Sanitary Certificates for Processed Meat and Egg Products

The government of Peru is implementing a new certificate for processed products of animal origin. A Single Export Sanitary Certificate (SESC) containing both human and animal sanitary requirements from Peru’s National Sanitary Authority (DIGESA) and the National Agrarian Health Service (SENASA) must now accompany shipments of processed products of animal origin, including processed meat and egg

products. In January 2018, Peru's Ministry of Foreign Trade and Tourism (MINCETUR) sent a letter to the U.S. Department of Agriculture's Foreign Agricultural Service formally notifying the new sanitary import requirements for U.S. processed meat and egg products. The United States has encouraged Peru to notify the new certificate to the WTO Committee on Sanitary and Phytosanitary Measures to ensure transparency and avoid potential disruptions to trade over confusion with Peru's current and proposed certification requirements. Peru has declined to notify the new certificate to the WTO, claiming that it does not represent any new requirements. In October 2019, USDA's Food Safety and Inspection Service (FSIS) sent a letter to MINCETUR with a proposed certificate enclosed that included Peru's SESC attestations for processed meat products, but Peru has yet to reply to the letter or proposed FSIS certificate (FSIS is reviewing Peru's proposed certificate requirements for egg products). In the meantime, U.S. exporters of processed meat and egg products, and ingredients, report that Peru is not allowing the importation of these products due to the new SESC requirement. The United States will continue pressing Peru to allow trade to continue until both countries negotiate and agree to new certificate requirements.

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. A legislative decree issued in September 2018 (DL 1444-2018) modified the public procurement law to allow government agencies to use government-to-government agreements to facilitate procurement processes. As a result, some ministries now appear to require foreign companies, including U.S. firms, to obtain sponsorship by their respective government to compete for major procurements.

U.S. firms continue to identify corruption as a significant problem in the government procurement process in Peru. The United States will continue to engage with Peru to ensure that all procurements covered by the PTPA's provisions are conducted in a manner that is consistent with the Agreement.

Peru is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the PTPA contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Peru remained on the Watch List in the 2019 Special 301 Report.

Peru continues to take positive steps relating to intellectual property (IP) rights protection and enforcement, including with respect to online piracy, interagency coordination, and IP court proceedings. However, pirated and counterfeit goods continue to remain widely available in Peru and right holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. For example, Polvos Azules, a popular shopping center in Lima, Peru, is listed in the Notorious Markets List. The United States continues to call for Peru to fully implement its PTPA IP obligations including enacting statutory damages for copyright and trademark infringement. The United States also calls on Peru to pass an anti-camcording bill and undertake IP reforms that include increasing and enhancing enforcement efforts such as the jurisdiction of special IP prosecutors, border measures, and further increasing coordination among enforcement agencies.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was \$4.1 billion in 2019, a 6.2 percent increase (\$242 million) over 2018. U.S. goods exports to the Philippines were \$8.7 billion, down 0.7 percent (\$60 million) from the previous year. Corresponding U.S. imports from the Philippines were \$12.8 billion, up 1.4 percent. The Philippines was the United States' 32nd largest goods export market in 2019.

U.S. exports of services to the Philippines were an estimated \$3.3 billion in 2018 (latest data available) and U.S. imports were \$6.9 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were \$3.9 billion in 2017 (latest data available), while sales of services in the United States by majority the Philippines-owned firms were \$26 million.

U.S. foreign direct investment (FDI) in the Philippines (stock) was \$7.6 billion in 2018, a 7.4 percent increase from 2017.

TRADE AGREEMENTS

The Philippines is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension the Philippines, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. The Philippines has only one bilateral free trade agreement, the Japan-Philippines Economic Partnership Agreement, which was signed in 2006. The Philippines also has a free trade agreement with the European Free Trade Association countries and is negotiating free trade agreements with the EU and an enhanced agreement with Korea, the latter of which is targeted for completion by the middle of 2020.

IMPORT POLICIES

Tariffs

The Philippines' simple average Most Favored Nation (MFN) applied tariff rate was 6.2 percent in 2018. The Philippines' simple average MFN applied tariff rate was 9.8 percent for agricultural products and 5.6 percent for non-agricultural products in 2018. The Philippines has bound 67 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 25.7 percent.

Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, including grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), are between 7 percent and 15 percent (except dates and figs, which have a 3 percent MFN applied tariff). WTO bound rates are much higher at 35 percent and 50 percent, including for fresh potatoes at 40 percent.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines imposes a TRQ on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products. Sugar has the highest in-quota tariff at 50 percent, followed by coffee, poultry, and potatoes at 40 percent. The in-quota tariff for corn and rice is 35 percent, while pork, coffee, and coffee extracts have in-quota tariffs of 30 percent. In

April 2018, the Philippines reduced in-quota rates for chipping potatoes to three percent at the request of local snack food manufacturers disadvantaged by the high Philippine tariffs compared to other ASEAN countries. Since 2005, the Philippines has usually maintained MAV levels at its Uruguay Round commitments despite dramatically increasing demand in the Philippines market for products subject to the MAV. The Philippine government increases in-quota volumes of affected MAV commodities in times of shortages, but because of its lack of predictability, the practice does not serve to relax the Philippines' restrictive agricultural import regime.

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 10 or more persons, depending on vehicle weight. New vehicle imports from ASEAN countries, Korea, and Japan benefit from preferential tariffs under the Philippines' free trade agreements. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments.

The Philippines Motor Vehicle Development Program, implemented by the Board of Investments, is designed to spur exports and encourage local assembly through low tariffs on components. A one percent tariff applies to complete knock-down kits imported by registered participants.

Pursuant to Annex 5 of the WTO Agreement on Agriculture, the Philippines maintained a rice quota of 350,000 metric tons (MT) until the special treatment expired on June 30, 2012. In July 2014, the WTO approved an extension of the Philippines rice quantitative restrictions until July 1, 2017. In exchange for the extension, the Philippines cut its MFN rice import tariff from 40 percent to 35 percent, and increased the MAV quota from MT 350,000 to MT 805,200. In connection with the WTO approval of the extension of rice special treatment, the United States and the Philippines reached a bilateral agreement on Philippine agricultural concessions in June 2014. As part of this agreement, the Philippines reduced tariffs on a variety of agricultural products, including buttermilk, cheese, grapes, poultry, and walnuts.

The Philippines did not pursue an extension of its WTO waiver in 2017 and instead began consideration of legislation to convert its rice quotas into tariffs. The Philippine President issued Executive Order No. 23 in May 2017, which unilaterally extended tariff concessions (*e.g.*, for mechanically deboned poultry meat) until December 31, 2020, or until the Philippines enacted a law on the tariffication of rice, whichever occurred first.

The Philippine President signed rice tariffication legislation into law on February 14, 2019, replacing rice quantitative restrictions with tariffs. Rules issued on March 5, 2019 provided details for implementing the law. Under this law, the in-quota MFN rate reverted to 40 percent, while tariffs for out-quota imports are levied at 180 percent or the tariff equivalent based on the WTO Agreement on Agriculture (upon the expiration of the waiver of the special treatment for rice), whichever is higher. In- and out-quota imports from ASEAN countries will be levied at a uniform 35 percent duty.

While the Philippine Congress considered the rice tariffication law, the United States encouraged Philippine industry to advocate for maintaining tariff concessions as a way to stimulate economic activity and ensure affordable food prices. As part of an October 2018 Joint Statement concluded under the United States-Philippines Trade and Investment Framework Agreement, the Philippines recognized the U.S. interest in the extension of Philippine tariff rates on certain agricultural products. The Philippines also committed to expeditious consideration of petitions for the extension of such rates, consistent with established procedural rules. In 2019, importers of U.S. meat products filed with the Philippine Tariff Commission a petition to maintain concessionary rates on poultry products, including mechanically deboned meat, covered by the June 2014 agreement.

Following the completion of the Tariff Commission process, on June 13, 2019 the Philippine President signed Executive Order No. 82, setting tariff rates for mechanically deboned or mechanically separated poultry at 5 percent for chicken and 20 percent for whole frozen turkey. These rates had previously jumped to 40 percent as a result of the passage of the rice tariffication law but will now remain at the lower concessionary tariff rate until the end of 2020.

Nontariff Barriers

Quantitative Restrictions

The Philippines prohibits the importation of used motor vehicles, except in certain cases which require prior authority to import from the Department of Trade and Industry. Importation of used motor vehicle parts is also regulated.

Customs Barriers and Trade Facilitation

Reports of corruption and irregularities in customs processing persist, including incidents of undue and costly delays, irregularities in the valuation process, 100 percent inspection and testing of some products, and inconsistent assessment of fees. Some importers have reported that the Philippines Bureau of Customs continues to use reference prices for the valuation of meat and poultry products in a manner that appears inconsistent with the WTO Customs Valuation Agreement. In August 2018, the Philippines Customs Commissioner issued an internal memorandum to customs collectors reminding them of their general legal obligation to assess duties on the basis of transactions value. As part of the October 2018 Joint Statement, the United States welcomed the Philippines' efforts to ensure the WTO-consistent valuation of agricultural imports for duty collection purposes, including the enforcement of laws, regulations, and policies prohibiting the use of reference pricing.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with those promulgated by the United Nations Economic Commission for Europe (UNECE). Under the U.S.-Philippine Joint Statement issued in October 2018, both governments pledged to cooperate on the implementation of a U.S. work program in the context of the ASEAN-United States Trade and Investment Framework Arrangement on automotive standards issues. The United States also recognized the Philippines' commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including, among others, the U.S. Federal Motor Vehicle Safety Standards (FMVSS).

Sanitary and Phytosanitary Barriers

African Swine Fever

Since the confirmation of African Swine Fever (ASF) in the Philippines on September 9, 2019, more than half of the provinces (65 as of the start of 2020) have imposed temporary restrictions on the movement (both entry and exit) of live hogs and/or fresh and frozen pork, including heat treated processed pork products from ASF-affected areas. Most of these provinces, particularly in the Visayas and Mindanao regions, have no reported ASF outbreaks. Moreover, Batangas province has restricted the retail sale of all imported frozen pork, including from countries not affected by AFS, such as the United States. Restricting

the movement of processed pork products will likely result in lower demand for imported frozen pork, which is used as a raw material for processed meat products.

Cold Chain Regulations

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets, which has the effect of imposing more burdensome requirements on the sale of frozen meat, which includes imported meat, than it does on the sale of freshly slaughtered meat, which is only from animals raised domestically. Seeking to address this issue and given the importance of the cold chain in the Philippines, the United States and the Philippines announced as part of the October 2018 Joint Statement their intent to collaborate on the development of cold chain requirements and best practices in the Philippines, taking into account international guidelines and codes of practice regarding food hygiene adopted by the Codex Alimentarius Commission. This work will build on private sector and local efforts already underway in the Philippines to improve the existing cold chain. Since the conclusion of the Joint Statement, U.S. Agency for International Development has started to fund a cold chain project in four Philippine localities in conjunction with the Cold Chain Association of the Philippines. A new U.S. Department of Agriculture Food for Progress project in 2020 will include a cold chain component in its overall mission to improve Philippine sanitary and phytosanitary (SPS) measures and facilitate agricultural trade.

Import Clearance

The Philippines Department of Agriculture requires importers to obtain a sanitary and phytosanitary (SPS) permit and to transmit the permit to the exporter prior to shipment of any agricultural product. This requirement adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept delivery or abandons the shipment. Since December 1, 2016, the process for import permits has included an additional requirement that permits be signed by the Secretary of Agriculture, or his designated representative, introducing some delays in the online application procedure.

Import Registration - Lake Food Colorings

In early 2018, the Philippine Food and Drug Administration halted new registrations and discontinued renewal of pre-existing registrations for products containing lake colors (a type of fat soluble food color additive). The Philippine Food and Drug Administration's decision is inconsistent with international standards. The Philippines notified this measure to the WTO in August 2019 and is reviewing comments from the United States and other Members.

Agricultural Biotechnology

In response to a December 2015 decision by the Philippines Supreme Court, the Philippines adopted in October 2016 a Joint Department Circular for the import of genetically engineered crops that requires the approval of five agencies (Departments of Agriculture, Health, Science and Technology, Environment and Natural Resources; and Interior and Local Government). Permits for a large number of previously approved biotechnology traits have lapsed since the Philippines Supreme Court decision, and their renewal applications are pending consideration under the new Joint Department Circular process, which is taking longer than anticipated. In light of these issues, the Philippine Department of Agriculture is currently undertaking a review of the Joint Department Circular and the biotechnology regulatory framework, which is expected to be completed by mid-2020.

SUBSIDIES

Export Subsidies

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives are available to firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority. The available incentives include: income tax holidays or exemptions from corporate income tax for four years, renewable for a maximum of eight years; after the income-tax-holiday period, payment of a five percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and zero percent VAT rate on local purchases, including telecommunications, electricity, water, and lease of building. Additionally, under the Export Development Act, exporters are entitled to tax credits, starting from 2.5 percent for the first 5 percent increase in annual export revenue, and an additional 5 percent and 7.5 percent for the next two succeeding 5 percent increases in annual export revenues. A pending tax reform bill, known as the Corporate Income Tax and Incentives Rationalization Act contains language that would eliminate these preferential tax rates and benefits, but as of the date of publication, no such changes have been adopted.

Separately, the Omnibus Investments Code offers various incentives to firms with more than 40 percent foreign ownership that export at least 70 percent of production, and Filipino-owned firms (defined as firms with more than 60-percent Filipino ownership) that export 50 percent of production.

GOVERNMENT PROCUREMENT

The government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Republic Act No. 9184 or the Government Procurement Reform Act specifies minimum Filipino ownership requirements for suppliers and contractors of goods and consulting services (60 percent) and infrastructure projects (75 percent). Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, Executive Order No. 120 issued in 1993 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 Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

INTELLECTUAL PROPERTY PROTECTION

While there have been improvements in the Philippines' intellectual property (IP) environment since its removal from the Watch List under Special 301 in 2014, the United States has some concerns regarding IP protection and enforcement in the Philippines. U.S. right holders report issues with increasing online piracy, counterfeit drugs, and counterfeit apparel. Such counterfeiting and piracy concerns have led to the continued inclusion of Manila's Greenhills Shopping Center in the Out-of-Cycle Review of Notorious Markets. Stakeholders have also criticized weak provisions in patent law that may preclude the issuance of patents on certain chemical forms unless the applicant demonstrates increased efficacy. Other stakeholder concerns include ineffective IP enforcement, including a lack of capacity and expertise. The United States continues to monitor the development of new regulations related to geographical indications (GIs), including their potential impact on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines has committed "to protect GIs in a manner

mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names.” In addition, the statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs.

SERVICES BARRIERS

Audiovisual Services

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting, as well as film distribution and pay-television. Additionally, foreign equity in private radio communications networks is limited to 40 percent under 2018 changes to the Foreign Investment Negative List.

Express Delivery

Foreign equity participation in the domestic express delivery services sector is limited to 40 percent.

Financial Services

Qualified foreign banks may own up to 100 percent of domestically incorporated banks or enter the market as foreign branches, but ownership restrictions apply to non-bank investors, regardless of their nationality. Non-bank foreign individuals and enterprises, as with non-bank Filipino investors, may not own more than 40 percent of the total voting stock in a domestic commercial bank, nor own more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five sub-branch offices each. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Insurance Services

The Insurance Code provides that all insurance companies operating in the Philippines, before entering into outward foreign reinsurance arrangements, must first seek to cede risks to reinsurance companies admitted to do business in the country. Moreover, insurance companies operating in the country must cede 10 percent of outward reinsurance placements to the state-controlled National Reinsurance Corporation of the Philippines.

Generally, only the state-owned Government Service Insurance System, or GSIS, may provide insurance for government-funded projects and coverage for all government properties, assets, contracts, rights of action, and other insurable risks to the extent of government’s interest.

Public Utilities

The Philippine Constitution limits foreign investment in the operation and management of public utilities to 40 percent. All executive and managing officers of public utility companies must be Philippine citizens, and foreign investors may serve on governing bodies only in proportion to their equity. The Philippines implemented this constitutional provision through the Public Service Law of 1936, as amended. However, the 80-year old law defines “public utility” broadly, and the government has subjected a wide range of

public services—including transportation and telecommunications—to the constitutionally mandated 40 percent foreign ownership limit. If a proposed legislative amendment to the definition in the law is enacted, only electricity transmission and distribution, gas and petroleum distribution systems, water pipeline distribution systems, and sewage systems would be considered public utilities subject to the 40 percent foreign ownership cap.

Telecommunications Services

Philippine regulators have defined telecommunications services as a public utility. As such, the Philippine Constitution limits foreign-equity ownership in telecommunications companies to 40 percent. Foreigners may not serve as executives or managers of telecommunications companies, and the number of foreign directors allowed is tied to the proportion of foreign investment in the company. Proposed priority legislation seeking to amend the Public Service Law of 1936 to exempt telecommunications from the definition of a “public utility” has passed the Philippine House of Representatives and is pending in the Philippine Senate.

Professional Services

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations provide for exceptions on the basis of reciprocity, such as medicine, pharmacy, nursing, and engineering. The practice of law, radiology and x-ray technology, criminology, and marine deck and engine officers are still reserved to Philippine citizens.

Advertising Services

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Retail Services

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-in capital of \$2.5 million or more, an \$830,000 minimum investment per store, and parent company net worth of over \$200 million. In addition, the retailer must either own at least five other retail stores or have at least one outlet with capitalization of \$25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is \$250,000, and the net worth of the parent company must exceed \$50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

BARRIERS TO DIGITAL TRADE

Internet Services

While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology. These restrictions could prevent Philippine government agencies from accessing best-in-class

cloud services. In addition, procurement rules under Republic Act 9184 requires cloud service providers to partner with a 60 percent Philippine-owned company to enter in to a government contract. A proposed amendment to the Public Services Act that would relax this requirement is still pending in the Philippine congress.

App-Based Services

The Philippines has established a restrictive regulatory framework for transportation network vehicle services or online ride-hailing mobile applications. In 2017, the Land Transportation Franchising and Regulatory Board limited the number of active drivers on ride-sharing platforms, resulting in a shortage of supply and poor service. Other regulations have put maximum limits on dynamic pricing and minimum limits on driver hours. Together, these restrictions reduce the value that these services are able to provide to consumers and undermine the competitiveness of these services *vis-a-vis* local alternatives.

INVESTMENT BARRIERS

Performance Requirements

In 2015, the Board of Investments implemented a six-year Comprehensive Automotive Resurgence Strategy 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 automobile units within the program period and domestic production of body shells and large plastic parts assemblies. In June 2017, the Board of Investments allocated the funds for the third and final slot to the government's public utility vehicle modernization program.

Limitations on Foreign Equity Participation

The Philippines has significant restrictions on foreign investment. The Foreign Investment Negative List (FINL), last updated in October 2018, enumerates foreign investment restrictions in two parts: List A details restrictions mandated by the Constitution or specific laws, and List B sets out restrictions mandated by the government for reasons of national security, defense, public health and morals, and the protection of small- and medium-sized enterprises. Foreign investment in sectors from the negative list may be prohibited outright (*e.g.*, mass media, practice of professions – in particular, fields such as radiology, law, and technology, small-scale mining, and cooperatives) or subject to limitation (*e.g.*, natural resource extraction). The amended FINL increased some foreign ownership limits, including for contracts involving construction and repair of locally-funded public works from 25 percent to 40 percent and private radio communication networks from 20 percent to 40 percent. The FINL continues to allow 100 percent foreign equity participation in other areas, including Internet access providers; wellness centers; and teaching at higher education levels, except for professional subjects included in government board or bar examinations; and entities outside the formal education system providing short-term high skills training. The Philippine Securities and Exchange Commission monitors corporations' compliance with the foreign equity restrictions mandated under the FINL.

Trade-Related Investment Measures

The Board of Investments (BOI) imposes a higher export performance requirement on foreign-owned enterprises whose foreign ownership exceeds 40 percent when providing incentives (including specific tax credits and tax exemptions) to domestic entities. To qualify for BOI incentives, 70 percent of the production of a foreign owned firm must be export related, compared to a 50 percent threshold for Philippine-owned companies. Foreign-owned firms engaged in domestic-oriented activities may enjoy BOI incentives if its

proposed activity is listed in the Investment Priorities Plan or if it qualifies as a pioneer activity. The latest three-year Investment Priorities Plan was published in 2017 and lists manufacturing activities, agricultural, health care services, infrastructure and logistics, innovation drivers, environment, and energy as preferred projects.

OTHER BARRIERS

Bribery and Corruption

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly the Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking, as well as the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was \$4.8 billion in 2019, a 66.8 percent increase (\$1.9 billion) over 2018. U.S. goods exports to Qatar were \$6.5 billion, up 45.9 percent (\$2.0 billion) from the previous year. Corresponding U.S. imports from Qatar were \$1.7 billion, up 7.9 percent. Qatar was the United States' 37th largest goods export market in 2019.

Sales of services in Qatar by majority U.S.-owned affiliates were \$626 million in 2017 (latest data available).

U.S. foreign direct investment (FDI) in Qatar (stock) was \$10.6 billion in 2018, a 30.0 percent increase from 2017.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Qatar's exceptions include alcohol (100 percent), tobacco (100 percent), urea and ammonia (30 percent), steel and cement (20 percent), and musical records and instruments (15 percent). Wheat, flour, rice, feed grains, and powdered milk are exempt from custom duties, in addition to more than 600 other goods. Qatar has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 15.7 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent) and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—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. In May 2017, Qatar approved a draft law on the VAT, but has not committed to an implementation timeline.

Nontariff Barriers

Import Licensing

An import license is required for the importation of most products. Qatar issues import licenses to Qatari citizens, Qatari partners in limited liability companies, or to foreign-owned entities operating in Qatar and registered with the Ministry of Commerce and Industry. Qatar, on occasion, has established special import procedures through government-owned companies to address increases in demand. Only authorized local agents of foreign firms are allowed to import goods produced by the firms they represent in the local market.

In the telecommunications sector, commercially registered companies in Qatar can import telecommunication equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork, pork products, and alcohol.

Documentation Requirements

In order to clear goods from customs zones at air and sea ports in Qatar, importers must submit a number of authenticated forms, including a detailed customs declaration, a bill of lading, a certificate of origin, pro forma invoice, as well as an import license. The Qatari Embassy, Qatari Consulate, or Qatari Chamber of Commerce in the United States must authenticate import documentation for U.S.-originated imports. This consularization process or authentication 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.

Customs Barriers and Trade Facilitation

Qatar ratified the WTO Trade Facilitation Agreement (TFA) in June 2017. Qatar is overdue in submitting four transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) details of operation of the single window (Article 10.4.3); (3) the use of customs brokers (Article 10.6.2); and (4) customs contact points for the exchange of information (12.2.2). These notifications were due to the WTO on February 22, 2017, according to Qatar's self-designated implementation schedule.

TECHNICAL BARRIERS TO TRADE

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

Dairy Regulations

In June 2019, Qatar implemented a new regulation on dairy imports that includes restrictions on reconstitution of dairy products, and trade-restrictive shelf-life requirements for “white cheeses” including U.S. exports of mozzarella. Qatar did not notify this regulation to the WTO prior to implementation. The

U.S. Government and private sector stakeholders continue to raise concerns with Qatar regarding this regulation, including the transparency of its implementation and the food safety and food quality rationale of the measure.

GOVERNMENT PROCUREMENT

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. In October 2017, the Qatari government issued a directive requiring all government entities issuing procurement tenders to increase the percentage of their domestic products' selections to 100 percent, provided such products meet necessary specifications and comply with tendering rules.

Qatar is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

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

SERVICES BARRIERS

Financial Services

Although the Qatari government permits foreign banks to establish physical presence and conduct most types of banking business in the Qatar Financial Centre (QFC), including provision of Islamic banking services, foreign banks are not allowed to offer stand-alone retail banking services outside the QFC. Laws and regulations that govern banking practices in the Qatar Financial Center Regulatory Authority differ from regulations by the Qatar Central Bank for local banks, in that the former more closely resemble international banking laws and regulations.

Distribution Services

Only Qatari individuals and entities are allowed to serve as local agents or sponsors for foreign firms, except those active in the industrial, tourism, education, health, and agricultural sectors. Some ministries waive the local requirement for agents of foreign companies that have direct contracts with the Qatari government.

BARRIERS TO DIGITAL TRADE

Qatar requires a license to provide Voice over Internet Protocol (VoIP) services, granting such licenses only to companies intending to charter in Qatar. This requirement serves as a market access barrier for foreign or internet-based communications service providers that are able to operate in nearly every country without a license. Two telecommunications service providers, Ooredoo and Vodafone Qatar, which are majority-owned by state-controlled entities, have obtained such licenses as of the end of 2019.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

In January 2019, Qatar enacted the law on “Regulating the Investment of Non-Qatari Capital in Economic Activity,” which increases the percentage of allowed foreign capital in domestic investments up to 100 percent in all sectors, except for the banking and insurance sectors and commercial agencies. Full foreign ownership in the banking and insurance sectors remains subject to Cabinet approval. The law includes provisions that protect foreign investment from expropriation, exempt some foreign investment projects from income tax and customs duties on imports of raw materials, and allow the transfer of investments’ assets to new owners without delay. Implementing regulations for this law have not been published as of the end of 2019.

In October 2018, Qatar enacted the law on “Regulating Non-Qatari Ownership and Use of Properties,” which allows non-Qatari individuals, commercial companies, and real estate investment funds freehold ownership of real estate in 10 designated zones and usufructuary right of real estate of up to 99 years in 16 additional zones. The Cabinet also agreed to allow non-Qatari ownership of some residential villas and retail outlets in certain commercial complexes. According to implementing regulations issued in March 2019, non-Qatari real estate owners will be eligible to claim Qatari residency as long as they own their properties.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was \$16.5 billion in 2019, a 16.0 percent increase (\$2.3 billion) over 2018. U.S. goods exports to Russia were \$5.8 billion, down 13.1 percent (\$872 million) from the previous year. Corresponding U.S. imports from Russia were \$22.3 billion, up 6.8 percent. Russia was the United States' 40th largest goods export market in 2019.

U.S. exports of services to Russia were an estimated \$4.9 billion in 2018 (latest data available) and U.S. imports were \$2.1 billion. Sales of services in Russia by majority U.S.-owned affiliates were \$9.7 billion in 2017 (latest data available), while sales of services in the United States by majority Russia-owned firms were \$629 million.

U.S. foreign direct investment (FDI) in Russia (stock) was \$14.8 billion in 2018, a 6.6 percent increase from 2017. U.S. direct investment in Russia is led by manufacturing, wholesale trade, and nonbank holding companies.

Sanctions and Countersanctions

Russian counter-sanctions, starting in 2014 in response to U.S. sanctions imposed on Russia as a consequence of its actions in Ukraine, have created uncertainty for American firms and reduced prospects for market penetration. In 2018, President Putin signed legislation broadening extensively the Russian government's authority to introduce additional counter-sanctions, including import and export bans, on products and services to/from the United States and other "unfriendly" foreign states. Although Russian's initial counter-sanctions were extended until December 31, 2020, no new counter-sanctions have been implemented to date.

The U.S. Government continues to engage with industry to analyze and assess the impact of sanctions on trade in the broader context of U.S. national interests. However, because the U.S. Government has curtailed its bilateral engagement with Russia as a result of Russia's aggression in Ukraine, USTR's ability to raise and resolve market access barriers in Russia has been severely limited. Nevertheless, efforts persist to open the Russian market and to ensure fair treatment for U.S. exports and U.S. businesses.

TRADE AGREEMENTS

Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the World Trade Organization (WTO), and on December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia's accession to the WTO signaled Russia's movement to adopt the key WTO principles of national treatment, Most Favored Nation (MFN) treatment, transparency, and, more generally, rule of law. That progress appears to have waned, however, as reported in USTR's [2019 Report on the Implementation and Enforcement of Russia's WTO Commitments](#), issued pursuant to section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012.

Eurasian Economic Union

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, nontariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. (As of December 2019, 60 percent of tariffs are harmonized within the EAEU.) The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for member states and with coordinating economic integration among member states. While tariff harmonization and standardized regulatory approvals across member states have eased the process for some U.S. companies of doing business within the customs union, some regulatory regimes—such as those applying to medical devices and to pharmaceuticals—have not been standardized and still require approvals by the individual member states.

In October 2019, the EAEU signed a free trade agreement (FTA) with Singapore. Under the FTA, EAEU member states will reduce tariffs on 90 percent of goods exported by Singapore to their markets. The share will then increase to 97 percent over a 10-year period. In the same month, the EAEU signed an FTA with Serbia that will replace Serbia's existing bilateral FTAs with Russia, Belarus, and Kazakhstan, and expand the free trade area to include Kyrgyzstan and Armenia. The EAEU and the Africa Union Commission signed a Memorandum of Understanding in late October 2019 to expand their economic cooperation in several areas including infrastructure and agriculture, trade, investment and business development, and regional economic integration. The EAEU and Iran ratified a three-year Interim Agreement signed in 2018 to create a temporary free trade area among them, and the Agreement came into force on October 27, 2019.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Russia's average MFN applied tariff rate for all goods was 6.8 percent in 2018 (latest data available). In 2018 (latest data available) Russia's average MFN applied tariff rate was 11.2 percent for agricultural products and 6.1 percent for non-agricultural products.

Russia has bound 100 percent of its tariff lines in the WTO, with an overall simple average WTO bound tariff rate of 7.6 percent. In 2018, Russia's simple average WTO bound tariff rate for agricultural goods (11.2 percent) equaled its simple average applied rates; its simple average WTO bound rate for non-agricultural products was 7.1 percent—slightly higher than its simple average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate is 303 percent.

Although Russia implemented another round of annual tariff reductions in 2019, as required by its WTO commitments, some concerns remain. For example, Russia has not informed WTO Members whether, for those goods subject to a combined tariff, the *ad valorem* equivalent of the specific duty is within its WTO *ad valorem* bound duty rate. In addition, U.S. stakeholders assert that Russia uses benchmark pricing to calculate duties on imports of certain types of footwear and are concerned that Russia may increase tariff rates on certain telecommunications equipment in order to protect its domestic industry.

Of greatest concern, however, is Russia's 2018 decision to adopt tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States in retaliation against the U.S. President's decision to adjust U.S. imports of steel and

aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. (These retaliatory duties are being applied by Russia only, not by other EAEU member states.) The United States has urged Russia to work with the United States to address excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation. In this regard, on August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO and requested consultations with Russia. Following unsuccessful consultations in November, the United States requested the establishment of a panel. A panel was composed in January 2019.

Since December 2013, when President Putin announced support for “streamlining electronic commerce,” government officials have proposed various reductions in the duty-free threshold for online purchases from non-EAEU online stores. The EEC approved new regulations for the import of goods by individuals, reducing the ceiling on duty-free purchases in foreign online stores from \$1,100 to \$570 on January 1, 2019, and to \$270 on January 1, 2020.

Taxes

Russian and U.S. leasing companies have reported that the value-added tax (VAT) assessed on inputs for exported final products is often not refunded, and that they often must resort to court action to obtain their reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and that actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. In addition, the companies have reported that, in some cases, local tax inspectorates have initiated audits and attempted to seize their bank accounts, forcing exporters to seek very expensive and time-consuming court enforcement. Of further concern is Russia’s rebate of VAT on payments for the “right to use” cinema products. The VAT payments on royalties paid for screening “Russian” movies (as defined in the Russian tax code) can be rebated but not VAT payments on royalties for screening U.S. (or other non-Russian) films. This practice increases the cost of screening U.S. films in Russia.

Russia has imposed a “recycling fee” on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) of automobiles and certain other wheeled vehicles (including self-moving agriculture and industrial vehicles) to pay a fee, determined by the age, total mass, and engine size of the vehicle. The fee is intended to cover the cost of recycling the automobile at the end of its useful life. In April 2018, the fee was increased by, on average, 16 percent to encourage development of environmentally friendly waste management technologies. In January 2020, the average rate of the fee for passenger cars more than doubled to account for lower customs rates and to maintain the overall level of tariff protection. As a result, in 2020, recycling rates for new private passenger cars imported by their owners range from RUB 3,400 (approximately \$53) to RUB 445,000 (approximately \$6,874) and for the same used vehicle range from RUB 5,200 (approximately \$80) to RUB 700,200 (approximately \$10,816). Although the fee is imposed on both domestic producers and importers, concerns remain regarding the overall level and calculation of the fee for heavy-duty commercial vehicles. Moreover, industry stakeholders assert that the Russian government offers a variety of subsidies to offset the recycling fee based on criteria that ensure only domestic producers, including domestic manufacturers of foreign-branded cars, receive the offset subsidies. The Ministry of Finance has proposed converting various non-tax payments, including the recycling fees, into new taxes. If the recycling tax is approved, it would apply to companies that have already implemented waste disposal programs and were previously exempted from recycling fees.

Copyright Levy System

U.S. stakeholders have raised concerns about the administration of Russia’s copyright levy system. Russia collects a levy on both domestic and imported products that can be used to copy, for personal use, works

protected by copyright (*e.g.*, video recorders, voice recorders, and photocopy machines). Those levies are provided to an accredited royalty collecting society for distribution to copyright holders. However, the list of domestic products on which the levies are paid appears to differ from the list of imported products on which the levies are paid, introducing the possibility of discriminatory collection of levies. In addition, the reporting and payment systems appear to differ. Russia's customs authority provides information on imports to the Ministry of Culture, which in turn provides the information to the collecting society to verify the payment of the levies by importers. By contrast, domestic manufacturers self-report and pay based on their sales. Further, although Russia accredited a collecting society to undertake the collection of levies and distribution of royalties, U.S. stakeholders have raised concerns regarding the lack of transparency in this process. The legitimacy of that collecting society has also been challenged in Russian courts, creating uncertainty as to its credibility and reliability. U.S. officials have raised concerns about these issues with Russia's Ministry of Culture and the Ministry of Economic Development.

Nontariff Barriers

Import Bans

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from Australia, Canada, the EU, Norway, and the United States for a period of one year. The list of banned food included certain beef, pork, poultry, fish and seafood products, fruits and nuts, vegetables, some sausages, and most prepared foods. Russia has since amended the list of products covered by the ban and expanded the list of countries covered by the ban, adding Albania, Iceland, Liechtenstein, Montenegro, and Ukraine. The ban applied to agricultural products from Ukraine only after January 1, 2016, the date on which Ukraine implemented the Deep and Comprehensive Free Trade Agreement with the EU. In June 2019, Russia extended the ban until December 31, 2020. In December 2018, Russia imposed a further ban on a wide variety of imports from Ukraine (both agricultural and non-agricultural). This ban covers not only products produced in Ukraine, but also any products transshipped through Ukraine and intended for the Russian market, thus potentially affecting U.S. exports to Russia.

Import Licensing

Although Russia simplified its licensing regimes when it became a WTO Member, stakeholders report that 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"). (Although the rules governing import licensing, including those for encryption products, are developed and promulgated at the EAEU level, the implementation of the rules is carried out by the individual member states.) However, U.S. exporters report that Russia continues to limit the importation of encryption products through the use of import licenses or one-time notifications. Stakeholders have raised concerns regarding the process for importing consumer electronic products considered "mass market" products under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies ("Wassenaar Arrangement"). A simple notification process is supposed to apply to these products; however, the EAEU regulations governing the definition of "mass market" products do not accurately reflect the definition of such products under the Wassenaar Arrangement or Russia's WTO commitments. Moreover, the Russian requirements to meet the definition of "mass market" are burdensome and appear to go beyond what is required under the EAEU regulations. As a result, U.S. exports of encryption products, particularly common consumer electronic products, continue to be impeded.

In addition, in 2012, Russia amended the regulations governing activity licenses for the distribution, among other activities, of encryption products. In doing so, Russia reasserted control over many consumer electronic products that had previously not needed an activity license to distribute. Because an activity

license to distribute encryption products is required to obtain an import license for encryption products, the 2012 amendments impose an additional indirect burden on the importation of such products.

Importers of U.S. alcoholic products face uncertainty with regard to Russia's regulatory regime. (*For further information, see the section below under Technical Barriers to Trade on Alcohol.*) For example, Russia abolished the requirement to obtain an import license for alcohol on accession to the WTO. However, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) still requires an activity license to warehouse and distribute alcohol in Russia. Stakeholders assert that the difficulty and expense involved in obtaining this license is disruptive to trade, and that the license is valid for only five years. Several U.S. exporters have experienced months of delays and expended thousands of dollars seeking to bring their warehousing practices into conformity with relevant regulations after inspections raised compliance issues. As importers of U.S. alcoholic products seek to renew their activity licenses, the United States will work to ensure that Russia's alcohol warehouse licensing provisions are WTO-consistent, transparent, and not unnecessarily burdensome.

Import licenses or activity licenses to engage in wholesale and manufacturing activities are also necessary for the importation of pharmaceuticals, explosive substances, narcotics, nuclear substances, equipment to be used at nuclear installations and corresponding services, hazardous wastes (including radioactive waste), and some food products (*e.g.*, unprocessed products of animal origin). Stakeholders assert that Russia's opaque and burdensome activity licensing regime allows it to control access to many sectors, such as mining. U.S. officials have raised concerns about these import licensing issues with Russian and EAEU officials.

Customs Barriers and Trade Facilitation

In 2019, Russia began to implement a mandatory labeling regime ("track and trace regime") that will eventually require all goods, both imported and domestically produced, to carry a label with a unique identification key (similar to a barcode or a Quick Response code) to allow each and every product to be traced within Russia from production/importation to the point of sale. The track and trace regime applies initially to only certain industry sectors (*e.g.*, footwear; apparel; pharmaceuticals; perfumery products) but is expected to apply to all products sold in Russia by 2024.

To obtain the labels under the track and trace regime, the importer or manufacturer must partner with a Russian entity and provide detailed information about the product to a public-private "Operator." The Operator will issue encrypted labels comprised of two parts: an identification part (information about the product and a unique serial number) and a verification part (an encrypted code). Russia asserts that the regime will fight counterfeit products and prevent tax fraud. Various affected industry stakeholders have raised significant concerns about the regime, including the short implementation timelines; lack of operational details from the Russian government; the quantity of detailed data required for the labels; the risk of disclosure and misuse of the sensitive data collected under the regime; the possibility of national treatment and trading rights issues stemming from different procedures for importers to obtain these labels compared to domestic manufacturers; and arbitrary misuse of the system to halt sales of imports. Although Russia has shown some flexibility in response to stakeholder concerns, the United States will work with stakeholders and the Russian government to ensure that the system does not create new trade barriers to U.S. exports or undermine the benefits of the WTO Trade Facilitation Agreement.

A requirement that all customs duties, excise taxes, and VAT on alcohol be paid in advance of customs entry using a bank guarantee (or other type of deposit) is a longstanding customs challenge for importers of alcoholic products. Russia's customs authority often requires bank guarantees far in excess of the actual tax liability of the covered goods, especially for lower value products. Russian law permits its customs authority to set the bank guarantee at the highest amount that could be due if the actual amount due cannot

be calculated; however, stakeholders claim that information sufficient to calculate a more accurate and usually lower bank guarantee amount is generally available to, but not considered by, Russia's customs authority. In addition, stakeholders have reported that refunds or releases of these guarantees are sometimes delayed for seven to nine months. Further, some of Russia's 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 frequent demand for duplicative bank guarantees and the long delay in bank guarantee refunds may limit trade volumes due to the amount of money that importers must dedicate to guarantees.

U.S. stakeholders have raised concerns that the practice of Russia's customs authority of assessing tariffs on the royalty amounts for the domestic use of imported audiovisual materials, such as television master tapes, DVDs, and digital cinema packs, represents a form of double taxation because royalties are also subject to withholding, income, VAT, and remittance taxes. U.S. consumer goods companies have also reported that Russian customs authorities calculate customs duties not just on the value of the physical carrier medium, but also on royalty value of the copyright- or patent-protected content contained on the medium (*i.e.*, on the value of the proceeds of the authorized licensed use of a copyright- or patent-protected work). U.S. companies contend that this methodology leads to inflated valuations for tariff purposes.

U.S. stakeholders report that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russia to improve transparency in this area and ensure compliance with WTO commitments.

Import Substitution Policies

In 2019, Russia continued to accelerate its promotion of import substitution and called for more local content across a variety of sectors. (*For further information, see the section below on Investment Barriers.*) Russian government officials, including President Putin, have signaled that import substitution is now a central tenet of Russian economic policy. Sectors in which localization policies have been developed and implemented over the last several years include agricultural, transport vehicle, telecommunications, consumer goods, textiles, optical fiber, defense, oil and gas, solar and wind energy, software, and medical devices. Initially, the Russian government implemented these preferences primarily through government procurement, but in 2015 extended the mandated preferences to purchases by state-owned enterprises (SOEs). (*For further information, see the section below on Government Procurement.*)

Russia's most recent localization effort in the technology sector is a law requiring the pre-installation of Russian software on certain consumer electronic products (*e.g.*, smartphones, computers, tablets, and smart TVs) sold in Russia. The Russian government has not yet identified the specific applications that will be required for pre-installation, but has identified categories, including search engines, mapping and navigation software, anti-virus software, software that provides access to electronic-government infrastructure, instant messaging and social network software, and national payment software. Implementation of the law will be staggered, starting with mobile phones on July 1, 2020. Presented as giving Russian consumers more choice and helping domestic information technology companies promote their products, stakeholders note that the law appears to be another effort by the Russian government to disadvantage imports and increase control over technology. In addition, technology companies are concerned that the new law would expose devices and services to potentially unsafe, insecure, or unreliable technology. The United States will closely monitor implementation of this policy, which has the potential to seriously disrupt U.S. and other foreign suppliers of devices, software and services.

Since implementing the import ban on certain agriculture products, Russian government officials have pressed for greater food self-sufficiency and urged import substitution (and an expansion of exports) in seeds and animal genetics. For example, U.S. stakeholders assert that foreign firms are not given access to the committee that decides which seeds are included in the official register, and that foreign firms receive significantly fewer registrations than do Russian firms. For heavy machinery, the Minister of Industry and Trade (MIT) has called for increasing the share of machinery and tool equipment produced domestically from the current 10 percent to 60 percent by 2020.

The Russian government has also targeted the healthcare industry for localization. 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). As part of its Pharma 2020 program, Russia earmarked billions of rubles to help the Russian pharmaceutical industry carry out preclinical and clinical studies and to provide subsidies for the reimbursement of incurred costs, including drug research. In April 2019, MIT published a draft of the new Pharma 2030 that is focused on increasing the domestic production of innovative drugs and encouraging their export; that draft remains pending.

Other healthcare-related policies that discriminate against U.S. exporters in favor of domestic producers include a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health and a 15 percent price preference for Russian (and other EAEU) companies in federal and municipal procurement auctions. In February 2015, Russia barred foreign medical device manufacturers from participating in government tenders for a specific list of medical devices (mostly low-technology goods) if two (or more) producers from an EAEU member state participated in the tender. Since 2015, the Russian government has expanded this list of medical products (for example, adding 14 types of medical devices to the list in 2019 and proposed expanding the list further to include food industry equipment, aluminum containing goods, musical instruments, sporting goods, children’s products, and building materials).

In the telecommunications sector, the Ministry of Economic Development and MIT have established local content requirements for specified applications or projects. The localization level depends on, *inter alia*, the ownership structure of the company, ownership of the legal rights to the technologies and software, scope of production in Russia, and the scope of the research activities and technological operations carried out in Russia.

Russia developed a global navigation positioning technology called the Global Navigation Satellite system (GLONASS) as an alternative to the U.S. GPS system. Russia’s Ministry of Transport issued a rule in June 2019 requiring that GLONASS-compatible satellite navigation equipment be installed on certain Russian-manufactured aircraft no later than January 1, 2020. In addition, any foreign-manufactured aircraft listed in a Russian airline’s Air Operator Certificate must have GLONASS or GLONASS/GPS compatible satellite navigation equipment installed by January 1, 2026. Because U.S.-manufactured aircraft listed in a Russian airline’s Air Operator Certificate are not currently configured for GLONASS, modifications to those aircraft would be necessary to meet this rule. Similarly, in the automotive sector, the EAEU technical regulations require that the ERA-GLONASS Emergency Response System (ERS) be installed in all new vehicles (whether produced in the EAEU countries or imported) starting in 2017 (but implementation has been delayed for used right-hand-drive cars imported from EAEU countries until December 31, 2020).

In 2015, the Russian government began to extend its local content requirements beyond government procurement to purchases by SOEs. For example, amendments to Russia’s law governing SOE purchases expressly favor Russian-produced products, including by granting the Russian government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services. Other amendments established a Government Import Substitution Commission with responsibility for

determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses. In November 2015, the Russian government issued a decree extending additional controls over the purchasing decisions of 35 of Russia's largest SOEs, including Gazprom, Rosneft, and Aeroflot. As a result, the selected SOEs' purchases of pharmaceutical, high technology, and innovative products must be coordinated with the Federal Corporation on Development of Small and Medium Business. Russian law further recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. (*For further information, see the section below on Government Procurement.*)

Another instrument Russia uses to implement its import substitution policies is a "Special Investment Contract" (SPIC). In 2015, Russia introduced SPICs to focus on creating or modernizing its industrial capabilities, particularly for those products that Russia does not currently produce. Participation in a SPIC allows an investor to enroll in certain Russian subsidy programs designed for domestic manufacturers and benefit from certain tax incentives. Under a SPIC, the investor must implement a project that launches or develops one of the technologies on the List of Advanced Technologies and invest at least RUB 750 million (approximately \$11.6 million). A SPIC envisions the setting of target indicators (*e.g.*, production and sales volumes, minimum tax payments, and number of jobs) for which the investor is held accountable. In August 2019, Russia adopted a new "SPIC 2.0" framework, extending the possible lifetime of the available subsidies, eliminating the minimum investment amount, extending the maximum term of the contract, and clarifying rules on profit tax advantages, among other changes.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

U.S. companies cite technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products, and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, increasing the burden and costs for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, construction materials and equipment, and veterinary biologics, such as vaccines, in particular, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

Alcohol

Russian regulations on alcoholic beverages continue to raise trade-related concerns. At the national level, there is a long-standing requirement to register alcoholic beverage products with the Federal Supervisory Service for Protection of Customers Rights and Human Well-Being (Rospotrebnadzor). Since 2013, Russia's Federal Service for the Regulation of the Alcohol Market (FSR) has maintained additional notification requirements for both existing and new-to-market alcoholic beverages sold in the Russian market. Much of the information required by the FSR as part of the additional notification requirements appears duplicative of information required by Rospotrebnadzor in the registration process.

Russia also adopted product standards for whiskey, rum, brandy, liqueurs, and vodka. Although the standards are described as voluntary, it is not clear whether those standards will, in fact, be applied as mandatory standards, introducing significant uncertainty into the market. Furthermore, industry is uncertain whether those standards will be applied to imports. In addition, the EEC adopted a technical regulation on alcoholic product safety, which will come into force on January 9, 2021. Although

stakeholders report that the revised regulation includes some improvements from the original version (*e.g.*, ingredient labeling and size of the warning statement), some concerns remain. For example, concerns remain with respect to uncertain definitions of different categories of spirits, the use of analytical parameters for certain product categories, minimum aging requirements, and unclear product certifications and conformity assessment procedures. The United States will continue to work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments and urge Russia and the EAEU to adopt international standards or guidelines for such products.

Pharmaceuticals

The Law on Circulation of Medicines sets forth the basic regulations for biologics and biosimilars, but U.S. stakeholders continue to express concerns about implementation of the regime (*e.g.*, assessment guidelines for biosimilar drugs and determining the interchangeability of biologic drugs) creating uncertainty in the market. U.S. pharmaceutical manufacturers have raised concerns that the registration process for orphan drugs lacks clarity and is too vague to implement. They are also concerned about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical production. In particular, stakeholders have flagged the increased number of denials of GMP certificates, highlighting the lack of a process for paper review of corrective actions and raising concerns about disparate treatment of domestic and foreign manufacturers.

Toys

As a result of the United States raising concerns bilaterally and in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) that the EAEU's draft technical regulation "On Safety of Toys" contained requirements that deviate from international standards and would mandate pre-market evaluations, Kazakhstan has withdrawn the problematic draft regulation from consideration at the EEC. However, industry reports that Russia is developing a new toy regulation. The new regulation appears to be based on international standards, but may also include some type of psychological testing requirement. The United States will continue to raise concerns to ensure that any measure is consistent with TBT obligations.

Medical Devices

In 2012, the Russian government issued a decree mandating that all medical device producers receive new registration certificates by January 1, 2014 (later extended to January 1, 2017). U.S. exporters voiced concern that most medical device manufacturers would not be able to meet this deadline and would lose access to the Russian market. In February 2017, the Russian Ministries of Health, Finance, Justice, and Economic Development agreed to extend the validity of previously issued certificates for medical devices until January 1, 2021, at which point EAEU certificates will be required. The medical device industry is also concerned about the implementation of the EAEU common market for medical devices, due to enter into force on January 1, 2022. Industry is concerned that the EAEU draft legislation would negatively affect the functionality of the common market.

Transparency

The United States continues to emphasize to Russia the importance of transparency. 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, including proposed amendments, at an early enough stage and with sufficient time so that comments can be taken into account. In response, Russia notified some proposed technical regulations and conformity assessment procedures. Despite repeated requests, Russia has not notified measures related to new registration requirements for

alcoholic beverage products; certain technical standards and regulations governing the required installation of GLONASS-compatible navigational systems in civil aircraft; or revisions to amendments to the EEC's regulations governing food labeling. The United States also continues to remind Russia of its obligation to take into account comments submitted by other WTO Members.

Sanitary and Phytosanitary Barriers

As noted above, Russia has banned imports of most agricultural products since August 2014. Notwithstanding the resulting virtual cessation of agricultural trade, the issues discussed below remain market access barriers.

Beef and Beef Products

Russia is seeking to establish its own World Organization for Animal Health (OIE) official status for bovine spongiform encephalopathy (BSE). As part of this process, Russia informed its trading partners, including the United States, that it officially recognized their OIE status. Nevertheless, Russia continues to ban imports from the United States of uncooked beef from cattle over the age of 30 months due to concerns about BSE, despite the OIE's determination that the United States poses a negligible risk for BSE and therefore should not be subject to age restrictions. Russia will not accept U.S. imports until U.S.-Russia beef certificates are renegotiated. Russia's BSE-based ban on imports of certain U.S. uncooked beef also has effectively closed the Russian market to all U.S. cooked beef. The United States will continue to urge Russia to open its market fully to U.S. beef and beef products to reflect the OIE guidelines and the U.S. BSE negligible risk status.

In addition, in 2013, Russia adopted a zero-tolerance policy for beta-agonists and trenbolone acetate, standards that are more stringent than the Codex Alimentarius's (Codex) maximum residue levels for beef. At this time, the United States is not aware of any risk assessments for these products. Although the United States has established a "Never Fed Beta Agonists Program," Russia's prohibition of these hormones—along with the counter sanctions—continue to preclude U.S. exporters' access to the Russian market. Russia has also adopted a near zero-tolerance for tetracycline residues in beef, a standard more stringent than Codex's maximum residue levels (MRL), but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. The United States will continue to press for the removal of these barriers to exports of U.S. beef and beef products.

Milk and Milk Products

In 2014, the United States and the Russia-Kazakhstan-Belarus Customs Union (CU) concluded negotiations on a U.S.-CU veterinary certificate for heat-treated milk products. Nevertheless, Russia has effectively banned the importation of U.S. dairy products since September 2010, when Russia's Federal Service for Veterinary and Phytosanitary Surveillance (VPSS) instructed customs officials to allow shipments only from exporters on VPSS-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive also appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The United States continues to work with Russia and the other EAEU member States to eliminate the listing requirement for exporters of low-risk products, including heat-treated dairy products.

Pork and Pork Products

Russia maintains near zero-tolerance levels for tetracycline-group antibiotics, a standard that is more stringent than Codex's MRL. As part of its WTO accession commitments, Russia committed to submit a

risk assessment for tetracycline antibiotics conducted in accordance with Codex methodology or to align its tetracycline standards with Codex standards. However, Russia has yet to pursue either approach. Russia's adoption of a zero-tolerance for both beta-agonists and trenbolone acetate (described above), along with its ongoing counter sanctions, have deterred most U.S. pork and pork products from re-entering the Russian market. The United States will continue to press for the removal of these barriers to exports of U.S. pork and pork products.

Russia also requires U.S. pork to be frozen or tested for trichinosis, a requirement that constitutes a significant impediment to exports of U.S. fresh and chilled pork to Russia. The United States does not consider these requirements related to trichinosis to be necessary because U.S. producers maintain stringent biosecurity protocols that limit the existence of trichinae in the United States to extremely low levels in commercial swine. The United States will continue to work with regulatory authorities in Russia to resolve this trade concern.

Live Pigs and Products from Blood Derived from Swine

Due to concerns about reports of porcine epidemic diarrhea (PED) virus in the United States, Russia has, since May 2014, banned imports from the United States of live swine and products of swine blood that have not been subjected to heat treatment. In June 2014, the United States requested that the trade restrictions be rescinded, offering to add a "60-day PED free" statement to the current bilateral export certificate for live swine as well as testing of pigs for PED during isolation, but the restrictions remain in place.

Poultry

Russian regulations place an upper limit on the amount of water content in chilled and frozen chicken, despite calls by stakeholders and the U.S. Government to adopt the alternative of requiring labeling regarding water content. In addition, Russia continues to ban the importation and sale of certain frozen poultry for use in baby food and special diets, but has not provided the United States with risk assessments that conform to international standards to support these various regulations related to poultry. The United States will continue to work with regulatory authorities in Russia to resolve these trade concerns. Notwithstanding Russia's 2014 broad ban on imports of various agricultural products, in 2015, Russia banned all imports of U.S. poultry meat based on unsubstantiated claims that it had detected harmful and restricted substances in U.S. poultry products and concerns over proposed changes in the poultry inspection system at certain U.S. poultry establishments.

Between 2015 and 2019, Russia imposed various restrictions on U.S. poultry due to highly pathogenic avian influenza. These restrictions were all lifted by January 2019, but replaced by requirements that: (1) poultry shipments be recorded in Russia's "Mercury" cargo tracking system (an electronic certificates verification system for imported and domestically produced goods) and (2) any re-loading and temporary storage of poultry products transiting through Russia to Kazakhstan take place at European Union establishments accredited by the EAEU for the storage of products of animal origin.

Pet Food and Animal Feed

Russia requires a veterinary certificate to ship pet food and animal feed to Russia, as well as either a letter from the producer attesting to the absence of feed derived from agricultural biotechnology or a copy of the agricultural biotechnology registration provided by the Russian Ministry of Agriculture. Russia also requires that inputs for pet food or animal feed imported from a third country be accompanied by an official certificate endorsed by a veterinary official of that country's national animal health agency. Additionally, Russia restricts the use of most U.S. ruminant-origin ingredients in pet foods and animal feeds, further impeding access for U.S. exports to this market and limiting the variety of available U.S. products. Despite

its WTO accession commitment to eliminate listing requirements for these products, Russia continues to require approved lists of exporting establishments for pet food of animal origin. Since late 2018, Russia has refused to allow new U.S. facilities to export pet food to Russia until the facility receives a VPSS inspection or a U.S. supervision system audit due to the detection in January 2019 of undeclared and unregistered genetically engineered (GE) components in a U.S. feed additive exported to Russia.

Peanuts, Soybeans, and Corn

In May 2015, Russia banned the import of all U.S. peanuts due to the detection of low levels of cadmium (too low to present a human health risk) in some shipments from the United States. Although Russia lifted the ban on imports of U.S. peanuts in August 2019, trade has yet to resume as of the end of 2019. In February 2016, the VPSS announced a “temporary” suspension of imports of U.S. soybeans and corn (popcorn), without providing an adequate scientific justification for the suspension.

Agricultural Biotechnology

On June 29, 2017, Russia amended its legislation governing agricultural biotechnology, extending Russia’s ban on cultivation and breeding of GE plants and animals on its territory. The resolution prohibits the importation of GE planting seeds, strengthens state control of GE organisms and products derived from such organisms, and establishes penalties for violations of this federal law. This law effectively suspends the development of any system to approve agricultural biotechnology for cultivation, but permits research.

Russia has a registration system for GE food, but there are no methodological guidelines for registering agricultural biotechnology products for feed use, making it impossible for those products to be registered, and in some cases, preventing their import. Existing feed registrations are valid for only a five-year period, whereas registrations for GE food products are valid for an unlimited period. Feed registrations remain valid for only two soybean lines and four corn lines. Registrations for all other previously registered corn and soybean lines—13 in total—have expired since 2017. On July 3, 2018, the Ministry of Agriculture published a new set of proposed guidelines for review. The Russian government has not notified the WTO of these proposed guidelines nor published a timeline for their approval. The application fee costs, on average \$80,000, and apply to the first registration of GE food and feed products, and to the subsequent reregistration of feed products. This fee, in the view of U.S. stakeholders, is excessive. Furthermore, Russia still does not have a fully functioning system for approval of GE crops containing stacked agricultural biotechnology products. Rospotrebnadzor has developed a system for approval of stacked agricultural biotechnology products for food crops, but there has been no progress in the development of an approval system for feed.

Veterinary Drugs and Pathogens

Russia maintains a zero-tolerance policy for residues of those veterinary drugs that Russia has not approved, many of which are commonly used in U.S. animal production. Findings of veterinary drug residues during Russian border inspection of U.S. meat products have resulted in trade disruptions, including the suspension of U.S. beef, pork, and poultry facilities as approved sources for exported product. Russia similarly maintains a zero-tolerance policy for all food products, including raw meat and poultry, for *Salmonella*, *Listeria*, coliforms, and colony-forming units of aerobic and anaerobic bacteria. Such a policy is unwarranted with regard to raw products because food safety experts and scientists recognize that these pathogens are often closely associated with raw meat and poultry products and cannot be removed from the product. The United States is not aware of a risk assessment from Russia to justify its more stringent standards.

Systemic Issues

In addition to the product-specific issues discussed above, U.S. exporters continue to face systemic issues related to the export of agricultural products to Russia. Russia and the EAEU require veterinary certificates to include broad statements by U.S. regulatory officials that the products satisfy EAEU sanitary and veterinary requirements, including meeting certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear excessively restrictive and appear to lack scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where there is no risk of transmission from the product in question. In other cases, Russia requires export certificates for products for which certifications are unnecessary. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential risk. The United States is also concerned with Russia's failure to remove certain veterinary control measures for lower risk products, which could raise concerns under Russia's WTO obligations.

Russia, pursuant to an EEC regulation, allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) only from facilities on a list approved by all EAEU member states. The United States has worked with Russian and other EAEU authorities to narrow the scope of products subject to this listing requirement, with some success, but much of this work remains ongoing. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied a deficiency. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate an EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by sanitary and phytosanitary authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale. The United States will work closely with Russia to ensure that the EAEU inspection regulation is implemented fully.

SUBSIDIES

Gazprom, a publicly listed but state-controlled Russian company, has a monopoly on exports of pipeline natural gas produced in Russia and charges higher prices on exports of natural gas than it charges to most domestic customers. U.S. stakeholders have raised concerns that Russia's natural gas pricing policies effectively operate as a subsidy to domestic industrial users in energy-intensive industries, such as steel, and the fertilizer industry, which uses natural gas as an input. Stakeholders have also raised concerns about government subsidies to Russia's uranium enrichment industry, which they claim have allowed Rosatom, an SOE, to expand its production capacity in the face of a global surplus. According to past industry reports, state-owned and state-controlled banks have provided preferential loans to the steel and related industries, subsidizing those industries and distorting global competition.

As reflected in other sections of this Chapter of the NTE Report (*e.g.*, *Taxes*), the government of Russia has protected its domestic automotive industry through a variety of programs. Adding to the indirect subsidies offered the industry, in September 2017, the Russian government announced that it was providing annual subsidies of no less than RUB 134 billion (approximately \$2 billion) to its automotive industry between 2018 and 2020. Beginning on July 1, 2019, the Russian government launched a RUB 19 billion (approximately \$293 million) support program for its domestic car market amid declining demand and

sales. Industry stakeholders assert that such subsidies distort international markets, not just in finished automobiles, but in related upstream markets as well.

Also of concern to U.S. stakeholders are 2017 and 2019 Government Decrees that provide subsidies for the transportation of wheat, barley, and corn from interior regions toward export destinations. The measures are intended to stimulate the movement of grain exports from these interior regions, stabilize domestic grain prices, and support profit margins of agricultural producers. The Russian government emphasized that this support is not connected with the export of agricultural products and that it exists in certain interior regions to overcome the disparity between supply and demand in the domestic grain market. In September 2019, the government of Russia issued a decree to amend the eligibility criteria for transportation subsidies provided through the Russian Export Center to Russian exporters in order to encourage exports of high-value added goods. According to the government decree establishing the new criteria, the largest share (48 percent) of the subsidies designated for 2019—RUB 14.2 billion (approximately \$219 million)—were provided to the machine building sector, followed by the manufacturing sector (45 percent).

GOVERNMENT PROCUREMENT

In its WTO Accession Protocol, Russia committed to request observer status to the WTO Committee on Government Procurement and to begin negotiating to join the WTO Agreement on Government Procurement (GPA) within four years of its WTO accession. Russia became an observer in May 2013, and on August 19, 2016, informed GPA Members of its intent to initiate negotiations to join the GPA. However, Russia's GPA accession negotiations did not start until Russia submitted its initial offer in June 2017 and its replies to the Checklist of Issues in September 2018. When it joined the WTO, Russia committed its government agencies to award contracts in a transparent manner according to published laws, regulations, and guidelines. Russia has adopted certain local content requirements that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) because they relate to federal or municipal government procurement. Given the breadth of the government's role in the economy and the scope of the "Buy Russia" policies, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Government procurement restrictions accelerated in 2014 when Russia established a 15 percent preference for a variety of goods (including, *inter alia*, certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use.

In addition, Russia banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU. The Industrial Policy Law, which specifically promotes import substitution and localization, restricting government procurement (and SOE purchases) of foreign-made products went into effect on June 30, 2015. It 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 to Russian companies to boost their export potential.

To implement the Industrial Policy Law, Russia has established "local content" requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery. As a consequence, for example, some types of metalworking equipment must contain from 20 to 50 percent domestic parts, with increasing targets each subsequent year. In 2015, Russia reaffirmed the ban on government procurement of a wide range of foreign-made machinery (*e.g.*, machinery used in the construction and raw material extraction industries) and certain vehicles (*e.g.*, emergency service vehicles, bulldozers, and excavators). In addition, Russia banned government procurement of numerous foreign-made medical devices and health-related disposable goods if more than two companies from the EAEU member states submitted a bid; as noted

above, the list of covered medical devices was expanded in 2016. In August 2016, the Russian government also banned a list of certain food and dairy products from non-EAEU member states for government and municipal procurement, including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar. Similarly, pursuant to amendments to Russia's national procurement law, in 2016, Russia created a registry of Russian software; foreign-made software not on the list will no longer routinely qualify for government and municipal procurement, unless there is no similar domestically produced software available. In July 2016, the Russian government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. In late September 2016, Russia imposed a ban on the procurement of a range of more than 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. *(For further information, see the section above on Import Substitution Policies.)*

INTELLECTUAL PROPERTY PROTECTION

Russia remained on the Priority Watch List in the 2019 Special 301 Report. Despite recent implementation of anti-piracy legislation and collaboration between right holders and Internet platforms, online piracy continues to pose challenges for creative industries. Specifically, while Russian courts have issued injunctions against websites under the authority of anti-piracy legislation, criminal prosecution of those who own and operate these illicit sites is lacking.

In addition, the Special 301 Report identified trafficking in counterfeit goods and the lack of intellectual property (IP) rights enforcement actions by government authorities as some of the significant obstacles to Russia's adequate and effective protection of IP rights. Russia continues to be a thriving market for counterfeit products, including consumer goods, distilled spirits, agricultural chemicals, biotechnology products, and pharmaceuticals. Russia's inadequate IP rights enforcement efforts contribute to the illicit trade in counterfeit goods.

Also, in the pharmaceutical sector, stakeholders have raised concerns regarding restrictive patentability criteria, compulsory licensing, and insufficient protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of pharmaceutical products. Furthermore, Russia does not maintain an effective mechanism for early resolution of potential pharmaceutical patent disputes. Finally, stakeholders have also identified illegal camcording, large-scale online piracy of technical and scientific books and journals, ineffective protection of trade secrets, and an inadequate collective management regime as significant concerns.

SERVICES BARRIERS

Audiovisual Services

Under its 2017 "VOD law" (video-on-demand), Russia limits foreign ownership, management, or control of certain online video streaming service. Russia also prohibits advertising on pay television. While having little impact on state-owned (and state-financed) television channels, this prohibition, according to industry, has a significant adverse financial impact on foreign cable and on-demand services.

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 launched a domestic credit card “Mir” in 2015. This new procedure has introduced additional technical costs for foreign-based credit card companies, which must now transmit data for all transactions within Russia through the NSPC system, undermining a key competitive advantage of foreign payments suppliers, which was to rely on self-owned global processing platforms located outside of Russia. There are also concerns about the potential conflict of interest because the state regulator (the CBR) owns Mir.

Insurance Services

Although Russia has raised the aggregate 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.

Telecommunications Services

In 2017, the Russian State Commission for Radio Frequencies issued a decision requiring telecommunications operators seeking to rent capacity from a foreign satellite operator to demonstrate that Russian satellite providers do not have such capacity.

Other Services Barriers

Russia maintains restrictions on foreign suppliers providing certain energy-related services and services to public utilities. 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.

As noted above the new mandate to pre-install Russian software applications on a range of electronic devices may have the effect of providing trade-distortive advantages to Russian services suppliers. (*For further information, see the section on Import Substitution.*)

BARRIERS TO DIGITAL TRADE

Data Localization

Movement of Data

In 2015, Russia adopted legislation requiring that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. Following significant confusion over the practical requirements of the law, Russia’s Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) issued guidance on the implementation of the law, clarifying certain aspects of the law, for example, that “mirroring” of data (maintaining a copy of the data in Russia) meets the requirements of the law. Companies most likely affected by this law include companies seeking to serve Russia entirely on a cross-border basis as well as those that have a presence in Russia but rely extensively on centralized, capital-intensive data processing facilities located outside of Russia. At least one sector, airline reservations, has been exempted from the localization requirement. Industry stakeholders are concerned the law will limit their ability to offer a variety of services in Russia and increase the cost of doing business in Russia—particularly for small and medium-sized enterprises. To date, Roskomnadzor has inspected more than 2,000 domestic and foreign companies for compliance with the 2015 law, typically resulting in administrative warnings or nominal fines for violations. Roskomnadzor can order Internet

service providers to block access to infringing services and websites, and in late 2019, the Russian Duma adopted legislation imposing fines of up to RUB 18 million (approximately \$278,000) on Internet service providers for violations of the law.

Storage Requirements

In 2016, Russia adopted the “Yarovaya Amendments,” requiring certain telecommunications operators to store metadata locally for six months, with longer storage requirements depending on the type of provider. Industry representatives assert that the Yarovaya Amendments, under the guise of fighting terrorism, may require companies to assist government authorities in decrypting user communications, and prohibit encryption measures unless a decryption key is provided to the Russian authorities upon request. Industry has also raised a concern about the requirement that Russian Internet service providers (ISPs) must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia has also implemented restrictions on consumers’ use of virtual private networks (VPNs), and threatened to shut off market access for ISPs that allow VPNs to exist or function without being blocked. The U.S. Government is not aware, however, of any such action being taken. U.S. companies are concerned that these provisions may require them to provide the Russian government with excessive access to citizens’ private information.

Internet Services

Amendments to Federal Law 149-FZ in 2017 require news search and aggregation services that exceed one million daily visitors and are offered in the Russian language with the possibility of showing ads to be offered through a local subsidiary in Russia. Foreign providers are not permitted to offer such services on a cross-border basis, even though they are allowed to own a local company that offers them. The law additionally provides for significant content restrictions.

Other Digital Trade Barrier Issues

Russia’s Sovereign Internet Law took effect on November 1, 2019, giving the Russian government the authority to establish an alternate domain name system for Russia, cut off the Russian segment of the Internet from the global Internet under certain circumstances, and take additional steps to facilitate government control of Internet traffic within Russia and otherwise exert control over certain content and user activities. Stakeholders have raised concerns that this law and its enforcement will create a restrictive and burdensome environment in Russia for suppliers of telecommunications and Internet services, and for businesses that rely on those services.

INVESTMENT BARRIERS

While Russia has prioritized improving its investment climate, U.S. and other foreign investors continue to cite issues, such as corruption, lack of transparency and threat of “creeping” expropriation, that act as barriers to investment. Notwithstanding the creation of an Anticorruption Council and the enactment of significant anticorruption legislation, some internationally recognized corruption indices suggest there has been little progress in reducing corruption. In addition, Russia’s foreign investment regulations and notification requirements can be confusing and contradictory, and have had an adverse effect on foreign investment as a result. Further obstacles to investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority shareholder rights, the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms, and problems with enforcing the rule of law.

The 1999 Investment Law (“the 1999 Law”) contains broadly defined provisions that give the Russian government considerable discretion to prohibit or limit foreign investment in a potentially discriminatory fashion. For example, the Law permits the government to circumscribe investors’ rights for “the protection of the constitution, public morals and health, and the rights and lawful interest of other persons, and the defense of the state.” Although the Law includes a “grandfather clause” that protects certain investment projects (those that existed as of 1999, have greater than 25 percent foreign capital participation, and total investment of more than \$41 million) against certain changes in the tax regime or new limitations on foreign investment, a lack of corresponding tax and customs regulations means that effective protection afforded by this clause is, at most, very limited. In 2019, the government of Russia began drafting a Promotion and Protection of Investment bill to replace the 1999 Law, the 1999 Law “On Investment Activity in the Russian Federation in the Form of Capital Investments” and the 1999 Law “On Foreign Investments”. If adopted, the bill would support large infrastructure projects by providing a stable legal framework, offering investment incentives and lifting restrictions, all with the goal of facilitating and encouraging foreign investment.

Russian law places two primary restrictions on land ownership by foreigners: (1) foreign persons or entities may not own land located in border areas or other specifically assigned sensitive territories and (2) foreign citizens and foreign legal entities cannot own more than 50 percent of a plot of agricultural land (though foreign companies are permitted to lease agricultural land for up to 49 years).

Pursuant to the October 2014 law “On Mass Media,” foreign investors are limited to a 20 percent equity share in Russian media companies.

U.S. stakeholders have also raised concerns over limits on direct investments in the mining and mineral extraction sectors that they say discriminate against foreign companies, as well as a licensing regime they describe as non-transparent and unpredictable.

State-Owned Enterprises

Russia’s numerous state-owned enterprises (SOEs) play a prominent role across much of Russia’s economy, accounting for an estimated 70 percent of Russia’s economy. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field can be distorted in favor of SOEs as a result of these enterprises’ lack of transparency and lack of independence; unclear responsibilities of their boards of directors; misalignment of managers’ incentives and company performance; inadequate control mechanisms on managers’ total remuneration or their use of assets transferred by the government to the SOE; and minimal disclosure requirements. In December 2014, the government reversed a prohibition against senior government officials serving on the boards of state enterprises, further tilting the playing field in favor of state-owned or state-controlled enterprises by re-introducing a governmental or political voice in the companies’ decision-making processes. Government ministers or deputy ministers currently chair the boards of Russian Railways, RusHydro, Rostelecom, Transneft, and Russian Grids (Rosseti).

A specific variant of SOEs, “state corporations”, are 100 percent owned by the Russian government and operate under separate legislation and in a marketplace skewed in their favor. For example, state corporation holding structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment, while the case-by-case legal construction of state corporations (by virtue of their separate legal framework) leaves much scope for discretion and lobbying by company insiders at the expense of private enterprises. There are currently six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

The Russian government approved a privatization program for 2017 to 2019 that Prime Minister Medvedev estimated would contribute RUB 17 billion (approximately \$263 million) to the federal budget. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, creating concerns about protection for minority shareholders and corporate governance.

Investment Taxes

U.S. companies have also raised concerns about Russian tax authorities' scrutiny of payments that cross Russia's borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code.

Local Content Requirements

Russia maintains an investment incentive regime in the automotive sector with domestic content requirements and production targets. The first program, introduced in 2005, allowed for the duty-free entry of automotive parts used in the production of vehicles that contained at least 30 percent Russian content and required that automotive manufacturers produce at least 25,000 units domestically. In December 2010, Russia initiated a second automotive industry investment incentive program that increased significantly the required domestic production volume to 300,000 units and the domestic content requirement to 60 percent. Automotive producers also had to agree to establish a research and development center in Russia and to comply with the requirement that engines and transmissions should represent 30 percent of the output in Russia. According to Russia's Auto Industry Development Strategy, localization should reach 70 percent by 2025. As part of its WTO accession protocol, Russia agreed to consult with the United States and other WTO Members on WTO-consistent measures it could take in this sector, and to end the WTO-inconsistent elements of the automotive industry incentive programs by July 1, 2018. The government is extending state support programs for the automotive industry into 2020, focusing on car loans and leasing program support. For example, automakers were required to launch engine production in 2019 to continue to receive state support. The government has also set deadlines for the assembly of automatic transmissions and electric motors for 2023 and 2026, respectively, for automakers seeking continued state support. Such local content requirements remain a barrier to U.S. exports of automotive parts, and the United States will work with Russia to eliminate the problematic elements of these programs.

OTHER BARRIERS

Export Policies

Although Russia has eliminated export duties on a few products, it maintains export duties on 157 types of products for both revenue and policy purposes. For example, a variety of products are subject to export tariffs, such as certain fish products, oilseeds, fertilizers, non-ferrous metals, hides and skins, and wood products. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed strategically significant, such as hydrocarbons and certain scrap metals. However, in 2016, Russia introduced export duties on certain chemicals and anodes of the platinum group of metals. Russia has also banned the export of raw hides intermittently since 2014 in order to protect its leather processing industry. In 2016, Russia reduced the export duty on wheat to zero percent for two years, with the stated objective of

stabilizing prices in the domestic grain market. In June 2019, Russia extended the zero percent export duty on wheat by two years to July 1, 2021. Russia retains the ability to reinstate the export duty expeditiously if the need arises, contributing to uncertainty in the market.

Russia maintains a list of products that are “essentially significant for the domestic market” and hence could become subject to export restrictions or prohibitions. In 2015, Russia amended the list to include a variety of steel and non-ferrous metal scrap. Because Russia is a major source of scrap on global markets and a major steel producer, this addition contributed to the uncertainty of the availability of Russian scrap for export to global markets and caused concern among U.S. stakeholders of possible market distortions. In December 2018, Russia added precious metals ores and concentrates, as well as certain waste or scrap of precious metal or of metal clad.

Historically, Russia has maintained high export duties on crude oil to encourage domestic refining. Although Russia committed to cut its export duties on oil and oil products to the level of Kazakhstan as part of the process to establish the EAEU, in late 2015, the Russian government suspended the planned duty reductions for at least one year in order to gain extra revenue in light of economic pressures. Amendments to the Tax Code signed into law on November 24, 2014, and known as “the tax maneuver,” will gradually reduce export duties on oil and light oil products and increase the mineral extraction tax and export duties for refined products to compensate for the resulting loss of federal budget revenues. The change will make domestic crude more expensive for domestic refiners. Separately, the government maintains a 30 percent export tax on natural gas. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its commitment to eliminate discrepancies in such rates by July 1, 2013. Since June 2015, there have been no changes to rates or notifications sent to the WTO of elimination of differential freight rates.

SAUDI ARABIA

TRADE SUMMARY

The U.S. trade balance with Saudi Arabia shifted from a goods trade deficit of \$10.5 billion in 2018 to a goods trade surplus of \$846 million in 2019. U.S. goods exports to Saudi Arabia were \$14.3 billion, up 5.1 percent (\$688 million) from the previous year. Corresponding U.S. imports from Saudi Arabia were \$13.4 billion, down 44.1 percent. Saudi Arabia was the United States' 24th largest goods export market in 2019.

U.S. exports of services to Saudi Arabia were an estimated \$10.1 billion in 2019 and U.S. imports were \$1.6 billion. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were \$4.3 billion in 2017 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were \$1.9 billion.

U.S. foreign direct investment (FDI) in Saudi Arabia (stock) was \$11.4 billion in 2018, a 2.7 percent increase from 2017. U.S. direct investment in Saudi Arabia is led by nonbank holding companies, mining, and wholesale trade.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. Saudi Arabia's applied tariff rates range from 6.5 percent to 40 percent on goods that compete with domestic industries. Saudi Arabia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 11.0 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent) and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—remain exempt from the tax. In 2019, Saudi Arabia instituted a 50 percent excise tax on all beverages with added sugar except for beverages with naturally occurring sugars.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State. Saudi Arabia began applying the VAT as of January 2018.

Nontariff Barriers

Import Bans and Import Licensing

Saudi Arabia maintains a non-automatic import licensing regime for any fresh fruit or vegetable labelled or imported into the country as an organic product, in accordance with the Ministry of Agriculture Decision No. 888174. The stated purpose of the regime is to ensure consumer health, food safety, and conformity

of imported goods with the international standards on organic farming, and to monitor the importation of such products. Import license applications must be submitted to the Ministry of Agriculture and are generally issued within five working days.

Saudi Arabia prohibits the importation of 37 categories of products, including alcohol, pork products, gambling devices, and drones. Furthermore, special approval is required for the importation of 23 categories of “restricted” products, such as pharmaceutical products, wireless equipment, and weapons and ammunition.

Customs Barriers and Trade Facilitation

U.S. private sector stakeholders have previously raised concerns about the policies and practices of Saudi customs, including inconsistent application of regulations, inaccurate assessment of duties, delayed clearance of goods, and lack of a mechanism for U.S. exporters to seek an advance ruling on Saudi customs procedures and regulations. However, a change in leadership at the Saudi customs authority in 2017 has reportedly led to reduced documentation requirements, shortened clearance times in major ports, and increased cooperation across Saudi trade agencies. Since 2018, the Saudi customs authority has continued its efforts to make customs policies and procedures more business-friendly.

Saudi Arabia ratified the WTO Trade Facilitation Agreement (TFA) in July 2016. Saudi Arabia is overdue in submitting four transparency notifications related to import, export, and transit regulations (Article 1.4); details of operation of the single window (Article 10.4.3); the use of customs brokers (Article 10.6.2); and customs contact points for the exchange of information (12.2.2). These notifications were due to the WTO on February 22, 2017, according to Saudi Arabia’s self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

In the past, Saudi Arabia has revised technical regulations for a variety of products relying primarily on standards developed by the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). Saudi Arabia has been increasingly reluctant to accept certain other international standards that may meet or exceed Saudi Arabia’s objectives, including those developed by U.S.-domiciled organizations through open, transparent, and consensus-based processes. Saudi Arabia’s refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States, including protective footwear, electrical equipment, and appliances. U.S. Government officials continue to engage the Saudi government on the importance of accepting international standards that are developed consistent with the WTO Technical Barriers to Trade (TBT) Committee Decision on international standards.

Energy Efficiency

U.S. automobile manufacturers have expressed concern that Saudi Arabia’s plans to implement the Saudi Corporate Average Fuel Economy standards would preclude the sale of certain popular U.S. vehicle models in the country. Saudi Arabia is also developing and implementing energy efficiency standards for a variety of consumer and industrial products, including air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation. These regulations could serve as unjustified barriers to trade. Working with the U.S. Government, some U.S.-based standards development organizations have succeeded in having their standards referenced in Saudi energy efficiency regulations. The United States continues to press Saudi Arabia to develop and fully implement appropriate mechanisms for stakeholder

consultation in regulatory decision-making to help ensure that interested parties have opportunities to provide comments on draft regulations and to provide a reasonable time for those comments to be taken into account.

Halal Regulations – Poultry and Beef

Saudi Arabia suspended imports of U.S. poultry in June 2018 due to implementation of regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process. In 2019, several other trading partners with similar production practices resumed exports to Saudi Arabia, while imports from the United States remain prohibited. Saudi Arabia also maintains halal feed restrictions for imports of meat products from the United States, which limits U.S. beef exports to Saudi Arabia.

Sugar, Salt, and Food Labeling Requirements

In September 2018, Saudi Arabia introduced a voluntary front-of-package nutritional labelling program for food products, and later announced its intention to make the program mandatory by January 1, 2021. Saudi Arabia notified this program to the WTO on March 5, 2019, but in December 2019 announced a delay in implementation as Saudi authorities conduct a further review of the proposed labelling requirements.

In early 2019, Saudi Arabia notified to the WTO a measure to restrict the sale and importation of food products containing sugar above arbitrary threshold levels. The United States and other trading partners raised concerns about the measure, in particular the lack of scientific justification for establishing the limits. In December 2019, Saudi Arabia withdrew the measure. Saudi Arabia also published a measure on added salt levels in food products, but did not notify the measure to the WTO, as the measure is voluntary.

Conformity Assessment

In 2019, the Saudi Standards, Metrology and Quality Organization implemented the Saudi Product Safety Program and launched an online certification process for certain regulated exports to Saudi Arabia. Importers of these products are required to register via an online platform to obtain Product Certificates of Conformity (PCoC) and Shipment Certificate of Conformity (SCoC). Products requiring PCoCs include, but are not limited to, detergents, building materials, paints, vehicle spare parts, lubricant oils, and textiles. A SCoC must be obtained for each shipment containing a regulated product. U.S. industry has expressed concern that implementation of the new process has been done with little warning and without transition periods. The United States also has questions about this scheme, including how it will relate to the GCC Regional Conformity Assessment Scheme and the GCC “G” mark.

Degradable Plastics

In 2016, Saudi Arabia notified the WTO of a new technical regulation for degradable plastic products. The U.S. Government and a broad range of industries have raised concerns related to the scope of products covered and the timeline for implementation. The United States also has raised concerns about the environmental impact of some of the degradable plastics. In February 2020, Saudi Arabia announced that it would not be moving forward with Phase 2 and Phase 3 of the regulation and would limit implementation to Phase 1, which impacts shopping bags, garbage bags, and plastic table covers only.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

Sanitary and Phytosanitary Barriers

Saudi Arabia restricts imports of U.S. beef to cattle aged 30 months or less, despite Saudi assurances that it would adhere to a beef protocol negotiated with the United States that automatically increase the age of cattle from which U.S. beef exported to Saudi Arabia can be produced. Saudi Arabia also does not recognize that the World Health Organization for Animal Health (OIE) upgraded the U.S. status for bovine spongiform encephalopathy (BSE) to negligible risk in 2013, and does not permit U.S. beef and beef products from all cattle regardless of age. Additionally, Saudi Arabia has not regionalized the United States for highly-pathogenic avian influenza (HPAI) following OIE guidelines. The United States continues to press Saudi Arabia to reopen the market for U.S. poultry and remove the age restrictions on beef.

In October 2018, Saudi Arabia proposed maximum residue limits applicable for meat, grains, and horticultural products, many of which do not conform to those set by the Codex Alimentarius Commission (Codex). Saudi Arabia is also considering a ban on several pesticides widely used in the United States. The United States continues to engage Saudi Arabia regarding concerns with these regulations.

Certification

After the GCC withdrew the “Guide for Control on Imported Foods,” Saudi Arabia implemented a requirement that trading partners, including the United States, register food production facilities and adopt model certificates if a certificate has not been negotiated. The requirement to utilize model certificates has interrupted U.S. exports of eggs, egg products, and seafood. The United States has requested Saudi authorities forgo these requirements and instead accept comparable U.S. certifications and published U.S. facility lists.

GOVERNMENT PROCUREMENT

Foreign contractors must subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender.

Foreign suppliers are also required to establish a training program for Saudi nationals. However, most defense procurement is negotiated on a case-by-case basis. The Saudi government continues to revise its procurement processes and policies to incorporate new ambitious goals of Saudi employment and localized production. In 2018, the Saudi government shifted away from offsets in favor of “localization” of purchases of goods and services and “Saudiization” of the labor force. Previously, the government required offsets in investments equivalent to up to 40 percent of a program’s value for defense contracts depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods for procurements in which foreign suppliers participate.

U.S. companies have reported long delays and difficulty in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi government to freeze payments to major contractors, accruing tens of billions of dollars in arrears and leading some companies to lay off workers in order to continue operations. Despite the Saudi government’s late 2016 allocation of \$26.7 billion to settle such arrears, U.S. companies continue to report significant payment delays.

Foreign companies are permitted to provide services to the Saudi government directly without a local agent and to market their services to other public entities through an office that has been granted temporary registration from the Ministry of Commerce and Investment. Foreign companies solely providing services to the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry within 30 days of signing a contract.

Saudi Arabia is an observer to the WTO Committee on Government Procurement. Although Saudi Arabia committed to initiate negotiations for accession to the WTO Agreement on Government Procurement when it became a WTO Member in 2005, it has not yet begun those negotiations.

INTELLECTUAL PROPERTY PROTECTION

In 2019, Saudi Arabia was elevated to the Priority Watch List in the annual Special 301 Report in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. While the Saudi Authority for Intellectual Property (SAIP) continues to work with the U.S. government and industry stakeholders on a range of issues, serious concerns remain.

Over the past few years, the Saudi Arabia Food and Drug Authority (SFDA) has repeatedly granted marketing approvals that raise concerns about domestic companies producing generic versions of innovative pharmaceutical products of U.S. companies. The approvals reportedly relied on data from innovators that is subject to Saudi Arabia’s system for protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval. Some approvals were also reportedly granted to domestic companies to produce generic versions of innovative pharmaceutical products that are under patent protection either in Saudi Arabia or the GCC. The SFDA’s actions have created significant concern among U.S. industry stakeholders.

Rampant satellite and online piracy in Saudi Arabia by the illicit service “beoutQ” and its widespread availability was a serious concern among U.S. copyright owners during 2018 to 2019; beoutQ’s activities in Saudi Arabia appeared to have ceased in August 2019.

SAIP has made progress to promote respect for IP throughout Saudi Arabia and to improve IP enforcement against counterfeit goods and pirated content, but continued progress is encouraged.

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

SERVICES BARRIERS

Financial Services

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank and foreign ownership in investment banks and brokerages to 60 percent.

Insurance Services

Saudi Arabia requires that all insurance companies be locally incorporated joint-stock companies, with foreign equity limited to 60 percent. The remaining 40 percent equity must be sold to Saudis on the domestic stock market. Insurance companies must operate on a cooperative or mutual basis, in effect requiring distribution of any profits between policyholders and the insurance company.

Professional Services

Entities providing certain professional services, including accounting, auditing, architecture, civil planning, healthcare, and dental or veterinary services, must have a Saudi partner. The foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. As part of its 2005 WTO accession commitments, Saudi Arabia generally allows consulting firms to register a local branch or subsidiary without a Saudi partner. In 2017, Saudi Arabia rescinded the requirement for engineering consulting firms to have a 25 percent Saudi partner, provided such firm can demonstrate it has been incorporated for at least 10 years and has operations in at least four different countries. Law firms, like accounting and architecture firms, have also been subject to a 75 percent foreign ownership limit. In September 2019, the Saudi government issued a royal decree prohibiting government departments and agencies from granting contracts to foreign consultancy firms, except in circumstances where there is no qualified Saudi alternative. The royal decree remains subject to interpretation, as the decree does not define the criteria for exemptions, nor does it clarify whether local branches of foreign-owned firms would be subject to the prohibition.

BARRIERS TO DIGITAL TRADE

In 2018, Saudi Arabia's Communications and Information Technology Commission (CITC) issued the Cloud Computing Regulatory Framework, which includes data localization requirements for various categories of data. Such requirements are likely to create a serious market access barrier for cloud services suppliers that operate on a global basis as well as foreign firms across the services sector that depend on global data storage and processing to supply their services. Through the Framework, CITC would also gain broad powers to require cloud and other information and communication technology service providers to install and maintain governmental filtering software on their networks, potentially allowing further restrictions on other internet-based services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment is currently prohibited in 10 sectors, including oil exploration and drilling, security services, fisheries, tourist guidance services related to religious pilgrimage, and services related to military activity. In 2016, Saudi Arabia began to allow full foreign ownership of retail and wholesale businesses,

removing the previous 25 percent local ownership requirement. However, foreign investors interested in such ownership are required to satisfy a number of conditions, including that they invest more than \$50 million in the Saudi economy over five years. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

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-sized enterprises, from entering the Saudi market. Companies also can experience bureaucratic delays after receiving their license, such as for obtaining a commercial registry or purchasing property.

Only “qualified foreign investors” (QFIs) designated by Saudi Arabia’s Capital Market Authority (CMA) are permitted to buy directly shares listed on the local Tadawul stock exchange. To qualify as a QFI, an entity must be duly licensed or otherwise subject to oversight by a regulatory body with standards equivalent to those of the CMA and have assets under management of at least \$500 million. QFIs may not own more than 10 percent of any individual company, and cumulative foreign ownership cannot exceed 10 percent of the total Tadawul market capitalization or 49 percent of any individual company. However, investors designated by the CMA as “foreign strategic investors” may own more than 49 percent of a listed company, as long as the investors agree not to sell the relevant shares for at least two years.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was \$5.2 billion in 2019, a 15.8 percent decrease (\$967 million) over 2018. U.S. goods exports to Singapore were \$31.5 billion, down 3.7 percent (\$1.2 billion) from the previous year. Corresponding U.S. imports from Singapore were \$26.4 billion, down 0.9 percent. Singapore was the United States' 13th largest goods export market in 2019.

U.S. exports of services to Singapore were an estimated \$22.7 billion in 2019 and U.S. imports were \$9.8 billion. Sales of services in Singapore by majority U.S.-owned affiliates were \$82.6 billion in 2017 (latest data available), while sales of services in the United States by majority Singapore-owned firms were \$9.7 billion.

U.S. foreign direct investment (FDI) in Singapore (stock) was \$218.8 billion in 2018, a 20.2 percent decrease from 2017.

TRADE AGREEMENTS

The United States–Singapore Free Trade Agreement (FTA) entered into force in 2004, and the two countries meet regularly to review the implementation of the agreement.

Singapore is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Singapore, also has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. In July 2018, Singapore ratified the 11-member Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which entered into force on December 30, 2018.

In October 2018, Singapore signed an FTA with the European Union (EU), which entered into force in November 2019. In September 2019, Singapore signed an FTA with the Eurasian Economic Union. The following month, the upgraded Singapore-China FTA entered into force. Singapore is negotiating upgrades to its FTAs with India and Japan, as well as new FTAs with the Pacific Alliance and the Southern Common Market in South America (MERCOSUR). Singapore participates in several regional FTAs, including the European Free Trade Association-Singapore FTA and the Gulf Cooperation Council-Singapore FTA.

IMPORT POLICIES

Tariffs

Singapore applies a Most Favored Nation (MFN) zero duty to nearly 100 percent of its tariff lines. The few lines with non-zero duties are for certain alcoholic beverages. Singapore has bound 72.0 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 9.5 percent.

SANITARY AND PHYTOSANITARY BARRIERS

Beef, Pork, and Poultry Pathogen Reduction Treatments

Prior to 2012, Singapore's Agri-Food and Veterinary Authority (AVA)² prohibited the use of all pathogen reduction treatments (PRTs) in the production of beef, pork, and poultry products sold in Singapore, which effectively limited the number of U.S. suppliers that could export frozen meat into the country. Although Singapore now permits the use of nine PRTs on fresh, chilled, and frozen meat and poultry, U.S. industry is hopeful additional PRTs can be approved in the near future pursuant to a 2016 bilateral letter exchange on sanitary and phytosanitary (SPS) issues. One of the key and still unapproved PRTs in Singapore is hypobromous acid (HOBr)/DBDMH. All new approvals are on hold as Singapore undergoes an internal review of its regulatory framework around PRTs. As over 60 percent of beef plants in the United States reportedly use HOBr/DBDMH, AVA approval of this particular PRT would greatly strengthen bilateral trade.

Pork Trichinae and Permissible Time Limits

Singapore requires U.S. pork exports to be frozen or tested for trichinosis, even though U.S. producers maintain stringent biosecurity protocols that limit the presence of trichinae in U.S. commercial swine to extremely low levels. U.S. industry notes that the requirement delays export by two to three weeks, adding to inventory and related costs (including expensive trichinae testing). Singapore also imposes overly restrictive requirements on frozen and processed meat and poultry products that limit the time after slaughter or manufacture that a product may arrive in Singapore. On February 4, 2016, as part of the bilateral letter exchange on SPS issues, the United States and Singapore agreed to establish a Bilateral Cooperative Mechanism on Pork Trade to serve as a forum for consultations between Singapore and the United States with respect to pork-related trade issues, including trichinella-related mitigations during shipment and the length of time after slaughter within which pork and pork meat products from the United States are allowed to enter Singapore. Under the terms of the letter exchange, the United States and Singapore will work to reach agreement to resolve these issues as soon as possible.

INTELLECTUAL PROPERTY PROTECTION

Despite Singapore's overall strong record on intellectual property (IP) protection and enforcement, and recent efforts to target unlicensed software use in Singapore, U.S. stakeholders continue to raise concerns, including regarding weak enforcement against infringing goods transshipped through Singapore and the use of unauthorized streaming services and third-party illicit streaming devices to access pirated content.

In April 2019, the Intellectual Property Office of Singapore established a new Registry of Geographical Indications (GI) as part of its obligations under the European Union-Singapore FTA. The United States continues to urge Singapore to implement the GI system in a fair and transparent manner that does not undermine access for U.S. producers and exporters who hold trademarks or who rely on the use of common names.

² As of April 1, 2019, AVA was restructured to form the Singapore Food Agency (SFA) and Animal and Veterinary Service (AVS). SFA is under the Ministry of the Environment and Water Resources and oversees all food-related matters including food safety and security. AVS is under the National Parks Board and oversees all non-food related animal, plant, and wildlife management matters.

SERVICES BARRIERS

Audiovisual Services

Pay Television

In 2011, the Media Development Authority (MDA), now the Info-communications Media Development Authority of Singapore (IMDA), implemented regulations requiring pay television providers to “cross carry” exclusive broadcasting content acquired after March 12, 2010. These rules require a pay television company with an exclusive contract for channels or content to offer that content to subscribers of other pay television suppliers over those suppliers’ networks at the same retail rates. U.S. content providers remain concerned about the negative impact these regulations have on private contractual arrangements, innovation in the packaging and delivery of new content to consumers, and investment in the market.

The United States will continue to engage with Singapore to address this issue. In particular, the United States will discourage Singapore from applying these cross carry requirements to suppliers using the burgeoning “over-the-top” (OTT) model, serving subscribers through the Internet, rather than through dedicated cable or satellite networks.

Satellite Television

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. IMDA licenses the installation, or operation of, broadcast receiving equipment, including satellite dishes for television reception. Parties who require television services received via satellite need to apply for a TV Receive-Only System License, which is given only to certain categories of organizations, such as financial institutions, that need access to time-sensitive information for business or operational purposes.

Financial Services

Unless they have been awarded Qualifying Full Bank (QFB) privileges, foreign banks and other financial institutions that issue credit cards in Singapore are permitted to provide ATM services to locally issued credit card holders only through their own networks or through a foreign bank’s shared ATM network. QFBs, however, can negotiate with local banks on a commercial basis to let their credit card holders obtain cash advances through the local banks’ ATM networks.

The Minister in charge of the Monetary Authority of Singapore (MAS) must approve a merger or takeover of a bank incorporated in Singapore or of a financial holding company, as well as the acquisition of voting shares in such institutions above specific thresholds: 5 percent, 12 percent, and 20 percent. One important consideration in this approval process is the government’s policy of maintaining local banks’ market share at no less than 50 percent of total resident deposits. With respect to expansion of business within Singapore, MAS will consider awarding new QFB privileges to foreign banks of FTA partner countries where there are substantial benefits to Singapore.

Professional Services

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by hiring, or entering into partnership with, Singapore-qualified lawyers. In order to advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture), or get licensed as a Qualifying Foreign Law Practice (QFLP). QFLP licenses are limited (ten have been issued since 2008; nine are still active as

of the end of 2019). 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.

OTHER BARRIERS

Healthcare Services

U.S. stakeholders have expressed interest in greater transparency regarding the Ministry of Health's procurement process, subsidy policies, and procedural rules regarding medical devices, and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

SOUTH AFRICA

TRADE SUMMARY

The U.S. goods trade deficit with South Africa was \$2.5 billion in 2019, a 16.4 percent decrease (\$485 million) over 2018. U.S. goods exports to South Africa were \$5.3 billion, down 3.3 percent (\$184 million) from the previous year. Corresponding U.S. imports from South Africa were \$7.8 billion, down 7.9 percent. South Africa was the United States' 45th largest goods export market in 2019.

U.S. exports of services to South Africa were an estimated \$3.0 billion in 2019 and U.S. imports were \$2.0 billion. Sales of services in South Africa by majority U.S.-owned affiliates were \$6.8 billion in 2017 (latest data available), while sales of services in the United States by majority South Africa-owned firms were \$97 million.

U.S. foreign direct investment (FDI) in South Africa (stock) was \$7.6 billion in 2018, a 3.9 percent increase from 2017. U.S. direct investment in South Africa is led by manufacturing, professional, scientific, and technical services, and wholesale trade.

TRADE AGREEMENTS

South Africa is a member of the Southern African Development Community (SADC) and the Southern African Customs Union (SACU), which also includes Botswana, Eswatini, Lesotho, and Namibia. As a member of SACU, South Africa applies the SACU common external tariff. In practice, South Africa sets the level of World Trade Organization (WTO) Most Favored Nation (MFN) tariffs applied by all five SACU countries, and manages all matters related to trade remedies and disputes for the SACU countries. South Africa ratified the African Continental Free Trade Agreement, which entered into force May 30, 2019, and will become operational on July 1, 2020.

South Africa has preferential trade agreements with the EU, the Southern Common Market (MERCOSUR), the European Free Trade Area, and SADC. The European Union-South African Trade and Development Cooperation Agreement (TDCA) of 1999 covers a significant amount of South Africa-European Union (EU) trade. In 2014, South Africa concluded negotiations for a SADC Economic Partnership Agreement with the EU (SADC EPA), which entered into provisional application in October 2016. SADC EPA partner countries include Botswana, Eswatini, Lesotho, Mozambique, Namibia, and South Africa. Angola is an observer to the agreement. In November of 2019, South Africa, Botswana, Eswatini, Lesotho and Mozambique signed an economic partnership agreement with the United Kingdom.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

South Africa's average MFN applied tariff rate was 7.7 percent in 2018 (latest data available). South Africa's average MFN applied tariff rate was 8.7 percent for agricultural products and 7.6 percent for non-agricultural products in 2018 (latest data available). South Africa has bound 94.3 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 19.2 percent.

South Africa's simple average WTO bound tariff rate is significantly higher, at 39.1 percent for agricultural products and 15.7 percent for non-agricultural products. South Africa's maximum WTO bound tariff rate

for industrial products is 50 percent, while its maximum WTO bound tariff rate for agricultural products is 597 percent.

U.S. exports face a disadvantage compared to EU goods in South Africa. South Africa's tariffs applied to imports from the EU on TDCA-covered tariff lines average 4.5 percent based on an unweighted average. The MFN duty rate, which applies to imports from the United States, averages 18.4 percent for the same TDCA-covered lines. Key categories in which U.S. firms face a tariff disadvantage include cosmetics, plastics, textiles, motor vehicles, and agricultural products and machinery.

The EU-SADC EPA further erodes U.S. export competitiveness in South Africa and the region due to the greater disparities in tariff levels that U.S. exports will face under the EPA compared to the TDCA. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa noting the unilateral benefits the United States offers South African imports under the African Growth and Opportunity Act.

In recent years, the South African government has encouraged domestic industry to appeal for increases up to the WTO bound tariff rates for those products where a lack of global competitiveness was a concern. In September 2013, in response to requests from its domestic industry, the South African International Trade Administration Commission (ITAC) increased applied import duties for whole chickens to the maximum WTO bound rate of 82 percent, and implemented import duty increases for other poultry products, including an increase in duties to 37 percent for imports of frozen bone-in chicken. In November 2018, the domestic industry again requested an increase to the applied import duties on bone-in and boneless chicken imports from 37 percent and 12 percent, respectively, to the WTO bound rate of 82 percent. Over the subsequent twelve months, South Africa received written comments from, and held ongoing consultations with, industry stakeholders, including domestic producers and poultry importers. As a result of the consultations, South Africa developed a Poultry Sector Master Plan (PMP) and created a PMP Council to monitor its implementation. In March 2020, the South African Department of Trade and Industry (DTI) implemented an increase in the MFN duty from 12 percent to 42 percent for boneless chicken and from 37 percent to 62 percent for bone-in chicken imports.

U.S. stakeholders have previously expressed serious concerns about South Africa's imposition of antidumping duties on imports of frozen bone-in chicken from the United States, including concerns about methodology, transparency, and due process spanning the original investigation and final determination in 2000 to the initiation of subsequent sunset reviews. The sunset reviews resulted in multiple extensions of the antidumping duties, which will again be subject to a sunset review in 2022. As a result of industry negotiations to address and resolve these issues, in June 2015, U.S. and South African poultry industry groups reached a framework agreement to establish a tariff-rate quota (TRQ) on a certain volume of U.S. frozen bone-in chicken that could be imported into South Africa without being subject to antidumping duties. In December 2015, ITAC published final guidelines for administering the TRQ. Upon publication of the final guidelines, the TRQ entered into force, allowing U.S. exports of frozen bone-in chicken to begin. In February 2016, shipments of U.S. frozen bone-in chicken to South Africa officially commenced.

U.S. frozen bone-in chicken imports into South Africa have increased in each year of the TRQ since 2016. American exporters and South African importers expressed concerns, however, with a number of aspects of the system, including with the guidelines, the administrative efficacy, and the improper transfer of quota allocations. In July 2018, ITAC and South Africa's Department of Agriculture, Forestry and Fisheries (DAFF) announced their intention to review the guidelines. ITAC and DAFF consulted stakeholders over the following months, including U.S. government officials and private sector representatives and, in November 2018, circulated a draft of the amended guidelines. ITAC declared that the amended guidelines addressed the two primary challenges raised by stakeholders: (1) the proliferation in the number of applicants and (2) non-compliance with the TRQ guidelines, *i.e.*, the improper transfer of quota allocations.

ITAC convened stakeholder meetings, and interested parties had until December 21, 2018 to submit comments. The U.S. Government submitted comments on January 4, 2019, after receiving an extension from ITAC. The amended guidelines were finalized on February 1, 2019; however, they did not take into account U.S. Government comments. The amended guidelines govern the 2019/2020 quota year, which commenced on April 1, 2019 and will conclude on March 31, 2020.

Taxes

In December 2017, the South African parliament passed the Rates and Monetary Amounts and Amendment of Revenue Laws Act, which contains the Ministry of Finance imposed tax on sugar-sweetened beverages. The tax, which became effective in April 2018, applies to both imported and domestically-manufactured beverages. It is meant to discourage the consumption of sugar-sweetened beverages to deal with the epidemic of non-communicable diseases such as diabetes, which is cited as the second leading cause of death, among South Africans, as well as obesity. The tax exempts milk products with no added sugar as well as 100 percent fruit and vegetable juices.

During the budget speech in February 2019, the South African Minister of Finance announced a 5 percent increase in the sugar tax on sweetened beverages from 2.1 cents to 2.21 cents per gram of sugar content that exceeds 4 grams per 100 ml. The first 4 grams per 100 ml are levy free. The tax has had a severe impact on the South African sugar industry's revenue, which is expected to decrease by up to R1.8 billion (approximately \$129 million) in the 2018/19 marketing year. Nevertheless, there may be opportunities for U.S. exporters of alternative sweeteners and beverage exporters who can supply the health foods market or are able to reformulate their products to the sugar content threshold.

Nontariff Barriers

Import Bans and Import Restrictions

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 two kilograms per 1,000; goods to which a trade description or trademark is applied in contravention of South African law (for example, counterfeit goods); unlawful reproductions of any works subject to copyright; and prison-made or penitentiary-made goods. ITAC requires import permits on used goods if such goods are also manufactured domestically, thus significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications.

Customs Barriers and Trade Facilitation

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017. South Africa is overdue in submitting three transparency notifications related to import, export, and transit regulations (Article 1.4); the use of customs brokers (Article 10.6.2); and customs contact points for the exchange of information (12.2.2), which were due to the WTO on February 22, 2017 according to South Africa's self-designated implementation schedule.

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 March 2020, the Department of Health had not put into effect the 2014 draft regulations and was reconsidering the proposed labeling requirements.

In September 2016, the DTI published the Final National Liquor Policy (No. 1208), which provides policy recommendations intended to amend the Liquor Act, 59 of 2003. Some stakeholders have expressed concerns related to the proposed prohibition on the sale of “very high alcohol content” products and the “strict” labeling of liquor beverage products, as these terms are undefined in the policy document. Other key industry concerns include the extended liability for liquor manufacturers and distributors if they sell alcoholic beverages to unlicensed trade outlets; extended liability for retailers if they sell alcoholic beverages to intoxicated persons; restrictions on the advertising of alcoholic beverages and prohibitions on sponsorship and promotions associated with alcoholic beverages. No amendments to the Liquor Act had been introduced as of November 2019.

In December 2017, the Department of Health issued amendments to its regulations relating to health measures on alcoholic beverages (Amendment Regulations Relating to Health Messages on Container Labels of Alcoholic Beverages (R1458)). The regulations, which are intended to go into force December 22, 2020, require that the health warnings printed on the labels of alcoholic beverages be increased in size to one-eighth of the total container size, as opposed to one-eighth of the label. Some stakeholders have expressed concerns about the proposal, including the lack of a definition of the word “container,” which could be interpreted to include not just the consumer-facing packaging, but also any other packaging materials used to contain or transport the beverages. In addition, stakeholders are seeking clarity about enforcement of the proposed rotation requirement, which would require that the seven health warnings be exhibited on the labels with equal regularity to one another within a 36-month period. The Department of Health has been engaging in consultative meetings with industry stakeholders since 2018 to address these concerns. The most recent stakeholder meeting was convened in April 2019 and the Department of Health assured South African alcoholic beverage industry representatives of its commitment to accept comments, reconsider the regulations, and proceed using a transparent process.

Certification

In March 2016, the Independent Communications Authority of South Africa (ICASA) and the South African Bureau of Standards (SABS) signed a Memorandum of Understanding 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, 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) information and communications technology products. South Africa still accepts test results from ILAC certified labs, but SABS also conducts a comprehensive review of the test results to ensure that the product meets South African EMC standards. This protracted review can take up to 18 months to complete.

Sanitary and Phytosanitary Barriers

Certification and Sealing of Containers for U.S. Meat and Poultry Exports

At the conclusion of health certificate negotiations on poultry, pork, and beef in March 2016, DAFF agreed that a U.S. Department of Agriculture (USDA) veterinarian would sign the export health certificate and accepted that the exporter would sign the seal on the container. Subsequently, however, South Africa insisted that a USDA veterinarian sign the seal on containers for pork casings and egg products, even though it would be impossible for USDA veterinarians to be present at each port to sign each container seal. The United States continues to urge DAFF to accept the agreed 2016 certification procedures for pork casings and egg products.

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. This restriction does not appear to be consistent with current international standards.

In January 2016, the U.S. Government and DAFF reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. This allowed a resumption of trade in certain pork products for which the certificate may be used. In December 2017, DAFF began allowing the importation of five additional pork cuts from the United States. However, certain cuts remain ineligible. Discussions to expand the list of U.S. pork cuts and products that may be sold without being further processed in South Africa are ongoing.

Poultry

In December 2014, South Africa banned all poultry imports from the United States due to the detection of highly pathogenic avian influenza (HPAI) in backyard flocks in Washington and Oregon. In November

2015, the United States and South Africa agreed to an animal health protocol to allow trade in U.S. poultry from states not affected by HPAI.

In January 2016, the U.S. Government and DAFF reached agreement on a USDA export health certificate for the importation of U.S. poultry into South Africa. At the same time, the U.S. Government and DAFF agreed to specific procedures with respect to salmonella testing to be applied to imports of U.S. poultry. This permitted the resumption of U.S. poultry imports into South Africa.

Despite this significant progress, U.S. exporters and South African importers continue to experience certain challenges and inconsistencies related to South Africa's salmonella testing methodology. The United States continues to urge DAFF to employ transparent and consistent practices in testing imported poultry products and to utilize a risk-based approach to sampling frequency.

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. DAFF tentatively agreed to an industry- and Animal and Plant Health Inspection Service (APHIS)-approved cold-storage treatment in 2018 and requested a site visit to inspect the production areas and cold chain.

In 2014, the United States requested market access for blueberries. The United States is presently negotiating pest-risk mitigation measures for blueberry shipments with DAFF.

GOVERNMENT PROCUREMENT

The 2011 Local Procurement Accord (the Accord) signed between the South African government and business, labor, and community stakeholders commits the government to significantly expand the value of goods and services it procures from South Africa suppliers. The Accord included an “aspirational target” of sourcing 75 percent of government procurement locally to boost industrialization and to create jobs. South Africa's National Industrial Participation Program, introduced in 1996, imposes an industrial participation obligation on all government and parastatal purchases or lease contracts for goods, equipment, or services, with an imported content greater than or equal to \$10 million. This obligation requires the seller or supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the goods or services purchased or leased pursuant to a government tender.

South Africa also uses government procurement to empower historically disadvantaged populations through its Broad-Based Black Economic Empowerment (B-BBEE) strategy. A company's B-BBEE scorecard accounts for a percentage of a bid's assessment, which varies by sector. (*For further information on B-BBEE, see the Investment Barriers section below.*)

South Africa is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The South African government has taken some positive steps toward more effective enforcement of intellectual property (IP), including by appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

The DTI introduced an updated draft of the Copyright Amendment Bill and the Performers' Protection Bill that contain some needed modernization of the copyright law, such as the introduction of the right of communication to the public. However, these bills also contain provisions that some stakeholders assert will weaken the adequacy and effectiveness of copyright and related rights protection in South Africa. Specific concerns include broad and ambiguous exceptions to copyright, new limitations on contractual relations between private parties, and a provision prohibiting the circumvention of technological protection measures (TPMs) that some stakeholders assert may not meet international standards and contains overly broad exceptions. The bills passed Parliament in March 2019, and are currently with the South African president who, as of March 2020, had not indicated whether he will sign the bills into law or send them back to Parliament. Significant numbers of South African and international stakeholders, particularly in the creative industries, oppose the bills in their current form. The DTI also finalized the Intellectual Property Policy of the Republic of South Africa Phase I (IP Policy), which lays the groundwork for future legislation and regulations governing IP in South Africa. Stakeholders have raised concerns that the IP Policy advocates for weaker exclusive patent rights, among other things.

Under the SADC EPA, which entered into force on a provisional basis in 2016, South Africa agreed to prohibit the use of certain terms that may be common names by recognizing them as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merit.

SERVICES BARRIERS

Audiovisual Services

The Independent Communications Authority of South Africa (ICASA) imposes local content requirements for satellite, terrestrial, and cable subscription services. In March 2016, ICASA updated local content regulations that require up to 80 percent of broadcast programming to consist of South African programming. Foreign ownership in a broadcaster remains capped at 20 percent.

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. South Africa also imposes local content requirements on investments in certain sectors such as renewable energy projects.

The Broad-Based Black Economic Empowerment Act of 2013, and associated codes of good practice, requires levels of company ownership and participation by Black South Africans to get bidding preferences on government tenders and contracts. The B-BBEE Codes of Good Practice creates a certification system (a "B-BBEE scorecard") that rates a company's commitment to the empowerment of historically disadvantaged people in South Africa. A strong rating is particularly important in competition for public tenders, as the B-BBEE scorecard will account for 10 percent of a bid's assessment, but is also important for branding purposes and for managing client relationships, as a company's score can influence a client's own B-BBEE score. The government has made B-BBEE requirements stricter in recent years, causing concern among U.S. firms, which have particularly struggled to score well on the "ownership" element of the scorecard, as a result of corporate rules that can prevent the transfer of discounted equity stakes to South African subsidiaries. Whereas U.S. firms had at one time been able to compensate with scores on other elements, recent changes to the rules introduced penalties for failing to comply with requirements relating to ownership, management control diversity, enterprise development, and preferential procurement. In addition to ownership, the preferential procurement category requires localization with "empowering

suppliers,” which proves challenging to companies importing products or inputs for value chains. Although the government recently created a program called Equity Equivalence (EE) for international companies that cannot meet the ownership element of B-BBEE through the direct sale of equity to local investors, some companies have reported that the reporting requirements and high level of required financial contributions make the EE program unviable for most.

Sectors such as financial services, mining, and petroleum have their own “transformation charters” intended to promote accelerated empowerment within those sectors. The charters for the integrated transport, forest products, construction, tourism, and chartered accountancy sectors have force of law in South Africa. Many other sectors, including financial services, information and communications technology, and property, have transformation charters that do not have force of law, yet express the sector’s commitment to “economic transformation.”

South Africa Mining Charter

On September 27, 2018, the Minister of the Department of Mineral Resources announced the Mining Charter 2018, stating that the new charter will be operationalized within the next five years to bolster certainty in the sector. The charter establishes requirements for new licenses and investment in the mining sector and includes rules and targets for black ownership and community development in the sector as a means to redress historic economic inequalities from the apartheid era. The new rules recognize existing mining right holders who have a minimum 26 percent B-BBEE ownership as compliant, but requires an increase to 30 percent B-BBEE ownership within a 5-year transitional period. Recognition of B-BBEE ownership compliance is not transferable to a new owner. New mining right licenses must have 30 percent B-BBEE shareholding, applicable to the duration of the mining right.

In March 2019, the Minerals Council of South Africa applied for a judicial review of the 2018 Mining Charter, based on several concerns about the charter and its role in promoting investment and providing a sustainable mining industry in South Africa. Specifically, the Minerals Council asked for the court to review: the legal standing of the Mining Charter in relation to the Minerals and Petroleum Development Act; the levels of black ownership of mines under Broad Based Black Economic Empowerment (B-BBEE) requirements; the levels of ownership required when B-BBEE partners sell their shares, and if B-BBEE ownership levels must be maintained in perpetuity, especially when levels of ownership preceded the current Mining Charter; how the mining charter applies for licenses granted under the Precious Minerals Act (2005) and the Diamonds Act (1986), and; certain aspects of non-compliance with the 2018 charter.

Other Investment Restrictions

The Protection of Investment Act of 2015 contains language that appears vague with respect to measures the government of South Africa may take against an investor or an 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 December 2018, the South African government published a 2016 draft Expropriation Bill for comment. The draft bill provides the process for the expropriation of land without compensation in limited circumstances. Parliament is preparing a bill to amend South Africa’s constitution to explicitly allow expropriation of land without compensation. The bill is expected to be introduced into Parliament at the end of May 2020.

OTHER BARRIERS

Bribery and Corruption

South Africa has enacted several laws in the last 15 years designed to increase transparency and reduce corruption in South Africa's government. One example is legislation barring the payment of bribes to public officials. However, this legislation fails to protect whistleblowers against recrimination or defamation claims. 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.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade deficit with Switzerland was \$26.7 billion in 2019, a 40.9 percent increase (\$7.7 billion) over 2018. U.S. goods exports to Switzerland were \$17.9 billion, down 19.2 percent (\$4.3 billion) from the previous year. Corresponding U.S. imports from Switzerland were \$44.6 billion, up 8.5 percent. Switzerland was the United States' 19th largest goods export market in 2019.

U.S. exports of services to Switzerland were an estimated \$39.3 billion in 2018 (latest data available) and U.S. imports were \$21.5 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were \$81.2 billion in 2017 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were \$48.4 billion.

U.S. foreign direct investment (FDI) in Switzerland (stock) was \$278.0 billion in 2018, a 11.2 percent increase from 2017. U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance and insurance.

TRADE AGREEMENTS

Switzerland, along with Iceland, Liechtenstein, and Norway, is a member of the European Free Trade Association (EFTA). However, unlike the other EFTA members, Switzerland has a series of bilateral agreements with the European Union (EU) and does not participate in the EU single market through the European Economic Area (EEA) accord.

IMPORT POLICIES

Tariffs

Switzerland's average Most Favored Nation (MFN) applied tariff rate was 6.6 percent in 2018 (latest data available). Switzerland's average MFN applied tariff rate was 36.5 percent for agricultural products and 1.8 percent for non-agricultural products in 2018 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 8.2 percent.

Agriculture

U.S. agricultural market access to the Swiss market is restricted by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs all supporting domestic production. Imports of nearly all agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs.

Swiss trade groups and certification associations also impose some barriers to agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains over 25 times higher than the fee for domestic bulls.

Nontariff Barriers

Import Licensing

Switzerland maintains a complex import licensing regime, primarily as a means to facilitate the allocation of tariff-rate quotas (TRQs). In conjunction with the general agricultural importing permit, used for statistical purposes, TRQ-related non-automatic licenses are required for imports of various animal, dairy, fresh fruit, and vegetable products. Separate automatic licenses are required to track the importation of certain fuels, sugar, rice, edible oils and fats, coffee, various kinds of cereal, and energy-rich and protein-rich ingredients for use in animal feed, all of which are subject to compulsory stockpiling under Swiss law.

Other non-automatic import licenses are issued as a means to implement various sanitary and phytosanitary measures and international treaties, for the protection of human health (such as the importation of blood, narcotics, and psychotropic drugs), and for the regulation of certain forest reproductive material.

SANITARY AND PHYTOSANITARY BARRIERS

Switzerland generally aligns its sanitary and phytosanitary (SPS) measures with those of the EU.

Switzerland notified seven SPS measures to the WTO in 2019.

Agricultural Biotechnology

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on planting biotechnology crops and marketing products derived from agricultural biotechnology animals. The moratorium is scheduled to remain in force through the end of 2021.

GOVERNMENT PROCUREMENT

Switzerland is a Party to the WTO Agreement on Government Procurement (GPA), which covers both federal and cantonal procurement. Because Switzerland has not yet adopted the revised GPA that entered into force in April 2014, U.S. government procurement access to Switzerland is still governed by the 1994 GPA.

INTELLECTUAL PROPERTY PROTECTION

Switzerland remained on the Watch List in the 2019 Special 301 Report due to lack of sufficient measures to address online copyright piracy. Although Switzerland generally maintains high standards of intellectual property (IP) protection and IP rights enforcement and makes important contributions to promoting such protection and enforcement internationally, U.S. copyright holders have continued to express concerns regarding specific difficulties in Switzerland's system of online copyright protection and enforcement and report that several large-scale copyright piracy websites maintain links to Switzerland.

The Swiss Federal Assembly passed new amendments to the Swiss Copyright Act in September 2019 reportedly designed to address the most serious concerns identified in past reports regarding copyright protection and enforcement, and the United States will continue to evaluate them to determine whether they do. The United States continues to follow closely Swiss government measures to address copyright piracy in an appropriate and effective manner, including through legislation, administrative action, consumer awareness, public education, and voluntary stakeholder initiatives.

SERVICES BARRIERS

Audiovisual services

A “unique distributor clause” in Switzerland’s Film Act requires a single distributor to have exclusive control over all language versions of a film for all forms of distribution, including theatrical release, DVDs, and video-on-demand.

Insurance Services

Managers of foreign-owned insurance company branches must reside in Switzerland. Public monopolies provide fire and natural disaster insurance in 19 of 26 cantons and workers compensation insurance within certain industries.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Privacy Shield

Swiss law limits the cross-border transfer of personal data of Swiss data subjects (any natural or legal person whose personal data is being processed) to countries Switzerland deems adequate under Swiss law, or where certain specific criteria, such as the use of standard contract clauses or binding corporate rules, are met. In January 2017, the U.S. and Swiss governments concluded the Swiss-U.S. Privacy Shield Framework to provide companies a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. Switzerland has issued a partial adequacy decision for the United States. The decision is limited to the companies that participate in the Privacy Shield Framework. As of September 2019, over 3,300 U.S. companies had self-certified as being compliant with Privacy Shield, and awareness of compliance with Privacy Shield is rising among Swiss firms.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was \$23.0 billion in 2019, a 51.6 percent increase (\$7.8 billion) over 2018. U.S. goods exports to Taiwan were \$31.2 billion, up 2.2 percent (\$658 million) from the previous year. Corresponding U.S. imports from Taiwan were \$54.3 billion, up 18.6 percent. Taiwan was the United States' 14th largest goods export market in 2019.

U.S. exports of services to Taiwan were an estimated \$10.5 billion in 2019 and U.S. imports were \$8.0 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were \$7.4 billion in 2017 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were \$3.1 billion.

U.S. foreign direct investment (FDI) in Taiwan (stock) was \$17.5 billion in 2018, a 2.9 percent increase from 2017.

OVERVIEW

The United States-Taiwan Trade and Investment Framework Agreement (TIFA) is the key mechanism for trade dialogue between the United States and the Taiwan authorities and covers the broad range of trade and investment issues important to U.S. and Taiwan stakeholders. It is co-led by the Deputy United States Trade Representative and Taiwan's Deputy Minister of Economic Affairs and held under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO). The last TIFA meeting was held in October 2016 in Washington, D.C. Since then, there have been subsequent trade- and investment-related meetings between the United States and the Taiwan authorities, which addressed several of the issues discussed below.

IMPORT POLICIES

Tariffs

Taiwan's average Most Favored Nation (MFN) applied tariff rate was 6.5 percent in 2018 (latest data available). The average MFN applied tariff rate was 16.9 percent for agricultural products and 4.9 percent for nonagricultural products in 2018 (latest data available). Taiwan has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 6.8 percent.

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 agricultural products. Taiwan subsequently eliminated TRQs for four fish products and eight agricultural products. Nevertheless, many TRQs remain in place, especially in the agriculture area. TRQs still cover 16 agricultural products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSG) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. Currently, Taiwan has recourse to an SSG for 17 agricultural product categories, including poultry meat, certain types of offal, and milk.

U.S. stakeholders continue to request that Taiwan lower or eliminate tariffs on many goods, including large motorcycles, agricultural products, and soda ash.

Rice

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices had exceeded Taiwan's ceiling price. U.S. exporters have raised concerns that Taiwan's ceiling price mechanism, which is not made public, arbitrarily sets prices lower than the levels bid by U.S. exporters, causing the tenders to fail. As a result of Taiwan's opaque system, in 2018, five percent of the U.S. CSQ, or 3,134 metric tons, was released to global tender. In 2019, Taiwan filled the U.S. CSQ of 64,634 metric tons by November through its normal simultaneous buy-and-sell process. However, in October 2019, 12,000 metric tons of the quota were filled with No. 3 U.S. grade long grain rice, a specification normally intended for animal feed. Taiwan's CSQ commitments call for equal access for U.S. table rice, and while Taiwan has generally observed these commitments, concerns over U.S. rice market access persist, both in terms of quantity and quality of the rice.

Distilled Spirits

In Taiwan, *mijiu* rice wine for cooking is taxed at a much lower rate than the rate applied to alcoholic beverages that are 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 imported alcoholic beverages should not be taxed at a higher rate than like domestically produced alcoholic beverages.

Nontariff Barriers

Customs Barriers and Trade Facilitation

In May 2017, the Ministry of Finance announced changes to Taiwan's *de minimis* threshold, below which import duties are not collected. Those changes affect a wide range of shipments imported into Taiwan. Effective January 2018, the *de minimis* value for each import dropped from NTD 3,000 (approximately \$100) to NTD 2,000 (approximately \$67). There is an exception in the regulations for commercial samples, for which the *de minimis* level remains NTD 3,000 without frequency restrictions. In 2018, 44.88 million of the total 46.49 million shipments imported into Taiwan fell under the *de minimis* threshold.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Agricultural Biotechnology Regulations

In December 2015, the Taiwan legislative authorities passed amendments to the School Health Act that banned the use of biotechnology food ingredients and processed food with biotechnology ingredients in school meals. Through the TIFA mechanism and related meetings, the United States has continued to highlight the lack of scientific basis for this ban and has urged its removal.

In May 2019, Taiwan's Ministry of Finance completed the process of establishing two additional Harmonized System (HS) codes for genetically engineered (GE) food and feed. Since GE foods are considered to be substantially equivalent to their conventional counterparts, there is no scientific basis for Taiwan's separate HS codes for GE food and feed. To date, this situation has not caused any trade stoppages, but it could pose complications in the future.

In June 2017, Taiwan’s Ministry of Health and Welfare (MOHW) notified the WTO of a proposed amendment to the Act Governing Food and Safety Sanitation that would require importers and manufacturers of GE products to establish traceability systems for GE products from imports and to keep records for five years. The United States submitted written comments in October 2017, and Taiwan notified the WTO of an updated version of the proposed amendment in January 2018. Although this revised version clarified the definition of genetically modified raw food materials, it did not address U.S. concerns that mandatory traceability requirements are impractical in global supply chains and will increase costs across these supply chains for reasons not supported by science and without providing meaningful information about food safety to Taiwan consumers. Taiwan has not provided a proposed date of adoption or entry into force.

Cosmetics—Labeling and Other Requirements

In September 2016, the Executive Yuan submitted amendments to Taiwan’s Statute for Control of Cosmetic Hygiene to the Legislative Yuan. In April 2018, the Legislative Yuan approved the draft amendments, which went into effect in May 2018. The statute was renamed The Act for Cosmetics Hygiene Safety Administration (Cosmetics Act). It includes new requirements regarding product information registration (for Product Information Files, or PIFs) and good manufacturing practices (GMP). Toothpaste and mouthwash products were added to products covered.

During trade and investment discussions in September 2018, the Taiwan authorities informed the United States that over 20 draft implementing measures would be notified and finalized before May 2019, one year after the Cosmetics Act went into effect. The Enforcement Rules of the Cosmetics Act were amended in June 2019, and all except Article 3 and Item 2 of Article 4 took effect on July 1, 2019. Article 3 and Item 2 of Article 4 will enter into force on July 1, 2021. Taiwan’s Food and Drug Administration (TFDA) issued all 24 implementing measures, including the GMP Guidelines, Scope of Cosmetics, Safety Evaluations through Animal Tests, List of Restricted Ingredients, Hypocritical and Exaggerating Labelled Advertisement and Guidelines to Recognize Efficacy, and Regulations for Cosmetics Recall. According to MOHW’s announcement in May 2019, the Enforcement Rules went into effect for all defined cosmetics products on July 1, 2019—except for toothpaste and mouthwash, for which the Enforcement Rules will enter into effect on July 1, 2021.

Among the various implementing measures, U.S. stakeholders are concerned about the product safety evaluation requirement for PIFs, which requires signature by a safety assessor. U.S. stakeholders are also concerned about the inclusion of certain substances in the List of Restricted Ingredients on the basis of their functions regardless of the level of use, type of the product in which the substance is used, or parts of the body affected. In addition, U.S. stakeholders are concerned about a tight timeframe for cosmetics recall under the Regulations for Cosmetics Recall. Finally, in order to meet the GMP standards under the Article 8 of the Cosmetics Act and Article 4 of the Enforcement Rules of the Cosmetics Act, U.S. stakeholders have suggested that the definition of “manufacturing premises” should not bind manufacturing and packaging sites together, since imported cosmetics are usually repackaged with Chinese labeling to meet the local market needs.

Chemical Substances—ECN and NCN Programs

Taiwan’s Occupational Safety and Health Act (OSH Act) and the 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/or 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, respectively.

In August 2015, in response to U.S. advocacy through the TIFA Technical Barriers to Trade Working Group, EPAT announced that it would serve as a consolidated single registration window to eliminate the burden of duplicative TCSCA and OSH Act registrations. 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 would deploy a list of chemicals to be subject to standard registration by the end of 2017. The EPAT issued a final amendment of the NCN and ECN Regulation Guidelines on March 11, 2019, having first announced a draft amendment a year before.

Amendments to the Regulations for the Labeling and Hazard Communication of Hazardous Chemicals made by Taiwan's MOL became effective in November 2018. In January 2019, Taiwan issued the amended Toxic and Concerned Chemical Substances Control Act, which entered into force on January 16, 2020. U.S. stakeholders have raised concerns about the amended Act including the scope, thresholds of chemical concentration and handling volume. At the same time, the amended regulations set stricter requirements for applications criteria for the protection of confidential business information.

Organics Regulation

In September 2017, the Executive Yuan submitted proposed legislation known as the Organic Agriculture Promotion Act to the Legislative Yuan addressing the production, marketing, testing, and labeling of organic products, including imported products. The Legislative Yuan subsequently passed this Act, which entered into effect on May 30, 2019, and implemented several changes affecting U.S. exporters. The changes included revoking the recognition of imported organic products unless their country of export recognizes Taiwan's organic program as equivalent to its own organic program for those same products within one year of the entry into force of the Act (*i.e.*, approximately by May 30, 2020). Under the Act, the current partial recognition of U.S. organic products could end sometime in May 2020, unless the United States also grants Taiwan organic equivalence for those same products or some other resolution is worked out. The United States has been engaging with the Taiwan authorities on this matter. Taiwan has made efforts to streamline the import process for organic products and is discussing with the United States how to address differences in residue tolerances between Taiwan and the United States.

Sanitary and Phytosanitary Barriers

Beef and Beef Products

The Taiwan authorities banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In 2006, Taiwan began allowing imports of U.S. deboned beef derived from animals under 30 months of age. In October 2009, the United States and Taiwan reached an agreement on a protocol to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, in January 2010, Taiwan's Legislative Yuan adopted an amendment to Taiwan's Food Sanitation Act that banned imports of U.S. ground beef, internal organs, eyes, brains, spinal cord and skull meat, as well as imports of all beef and beef products from cattle 30 months of age and older, for at least 10 years following the last confirmed BSE or variant Creutzfeldt-Jakob disease case. This amendment is contrary to Taiwan's obligations under the 2009 beef protocol. Taiwan also announced additional border measures, including a special import licensing scheme, for permitted offal. Additionally, Taiwan imposed stricter border inspection requirements for certain beef offal (such as tongue) that discourage trade in eligible items. In July 2014, Taiwan confirmed market eligibility for U.S. beef lips, ears, backstrap, skirt sinew, and tunic tissue, although barriers such as batch-by-batch inspections continue to discourage trade. The United States

continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, World Organization for Animal Health (OIE) guidelines, the United States' negligible risk status, and the beef protocol.

Beta-agonists

In September 2012, Taiwan adopted and implemented a maximum residue limit (MRL) for ractopamine in beef muscle cuts consistent with the Codex Alimentarius Commission standard. Taiwan has not implemented an MRL for ractopamine in other beef products (*e.g.*, offal) or pork, despite notifying the WTO in 2007 of its intent to do so. Taiwan authorities state that pressure from the domestic pork industry and consumer groups prevent their establishment of an MRL for pork. Apart from ractopamine, Taiwan has also not established MRLs for other beta-agonist compounds or provided science to support its policy. The United States will continue urging Taiwan to implement the remaining proposed MRLs for ractopamine without delay, and to accept and approve new applications for MRLs for beta-agonists based on science in a timely manner.

MRLs for Agrochemicals

The Taiwan authorities' slow process for establishing MRLs for pesticides, low number of approved MRLs, and zero tolerance policy for pesticides without established MRLs have resulted in U.S. shipments being stopped at ports of entry and has dissuaded some trade due to the high risk of rejection. The United States will continue encouraging Taiwan to continue to improve the speed, efficiency, and transparency of its MRL regulatory system to facilitate trade.

Greening and Rot in Potato Products

In September 2017, Taiwan authorities confirmed that they would not admit shipments of ready-to-cook potato products that exhibit any green coloration, as Taiwan had no acceptable threshold for greening on potato products. This action resulted in unnecessary rejection and detainment of U.S. potato shipments. Green coloration in potatoes is a natural reaction to sunlight, although green coloration can also be a potential indicator of glycoalkaloids. Following U.S. engagement, Taiwan authorities established a tolerance level for glycoalkaloids, effective November 2, 2018, to replace Taiwan's zero tolerance policy for green coloration in potato products. The standard is now being used to assess levels of solanine (greening) in imported potatoes and potato products.

Taiwan rejected shipments of potatoes due to rot and mold in 2016 and 2018. This remains a concern for exporters. Following successful engagement with Taiwan on potato greening, the United States, in coordination with U.S. industry and regulators in Taiwan, is pursuing a similar technical engagement on potato rot and mold. The goal of this engagement is to reach an agreement on an appropriate response to containers containing rot and mold.

GOVERNMENT PROCUREMENT

Amendments to the Government Procurement Act (the Act) went into effect in May 2019. The amended Act adds a national security provision. It also includes a modification requiring a government procurement contract to stipulate the responsibility of either party in the event that its erroneous performance, false representation, or poor management causes damage to the other party. Previously, the Act had applied only to the supplier's liability. In addition, to avoid a procuring entity's delay in correcting illegal procurement conduct, the amended Act adds that the procuring entity must proceed with a lawful alternative within 20 days from the date of receipt of a finding by the Complaint Review Board for Government Procurement (CRBGP) that the procuring entity is in breach of regulations. A supplier obtaining a favorable decision

against a procuring entity may request that the procuring entity reimburse necessary expenses incurred by the supplier for the preparation of the tender and the filing of a protest and complaint. The supplier may file a written complaint with the CRBGP within 15 days after the expiration of the 20-day window, if the procuring entity fails to take action to comply with the CRBGP's decision within that window.

Taiwan is a Party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Positive developments regarding intellectual property (IP) protection and enforcement in Taiwan include the implementation of amendments to the Pharmaceutical Affairs Act, amendments to Article 87.1.8 and Article 93 of the Copyright Act, and amendments to the Trade Secrets Act. However, considerable challenges remain in combatting copyright and related infringement, particularly with respect to online piracy.

In August 2019, final implementing regulations for the December 2017 Amendments to the Pharmaceutical Affairs Act went into force, establishing a mechanism for early resolution of potential patent disputes that included coverage for biologics. This new mechanism represents a promising step forward for Taiwan in its efforts to develop an innovative pharmaceutical sector. The United States will continue to monitor its implementation.

Following trade and investment discussions in Taipei in 2018, the United States and Taiwan agreed to a Digital Anti-Piracy Work Plan (the Work Plan). Among other things, Taiwan will continue to work to address IP issues such as enhanced enforcement cooperation, legislative reform of the Copyright Act, and promotion of legitimate education materials.

Leading up to the Work Plan, Taiwan took certain steps in the copyright arena. To combat infringing websites, the Taiwan Intellectual Property Alliance (TIPA) signed a Memorandum of Cooperation with the Taipei Association of Advertising Agencies (TAAA) in August 2017. Under this arrangement, TIPA provides TAAA with an infringing website list (IWL), and TAAA distributes the list to its members and advises them not to post advertisements on those websites. Expanding this initiative, the Digital Marketing Association and the TIPA signed a voluntary cooperation agreement in July 2019.

In December 2018, the Legislative Yuan introduced draft amendments to Article 87.1.8 and Article 93 of the Copyright Act to combat illicit streaming devices, and the amendments eventually became law, taking effect in May 2019. In May 2019, the Taiwan Intellectual Property Office also convened a meeting where participating associations, right holders, and e-commerce platforms reached consensus that the platforms will make efforts to remove illicit streaming devices and software applications that are identified by right holders to the platforms.

In October 2017, the Executive Yuan sent draft amendments to other articles of the Copyright Act to the Legislative Yuan for review. While the draft amendments subsequently introduced by the Legislative Yuan on these same topics represented progress in some areas, they also contained troubling provisions with respect to licensing and the role of collective management organizations, as well as vague and broad fair use exceptions. These draft amendments remain pending in the Legislative Yuan. Additionally, U.S. stakeholders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms.

Amendments to the Trade Secrets Act passed on December 31, 2019, give prosecutors the authority to issue protective orders during investigation proceedings, whereas previously only judges could do so during

litigation. These changes are expected to improve Taiwan's ability to effectively prosecute cases of trade secrets theft.

SERVICES BARRIERS

Financial Services

Securities Services

In December 2012, Taiwan's Financial Supervisory Commission (FSC) announced that it would provide preferential licensing procedures for foreign trust fund companies that meet FSC's localization standards. In November 2014, the FSC announced new measures to promote long-term investment in the Taiwan market by lowering the ceiling for Taiwan investors' share of an offshore fund from 70 percent to 50 percent and to 40 percent in some cases. The lower ceiling applies if the offshore fund does not meet certain qualifications for the preferential management scheme, such as establishing a local presence, investing an average of NTD 4 billion (approximately \$127.5 million) in onshore funds, and recruiting a certain number of Taiwan staff. The 70 percent ceiling remains for offshore funds that meet the preferential management scheme standards. As of September 2019, nine offshore funds met these criteria and were entitled to preferential treatment until September 2020, subject to annual review.

Telecommunications Services

With respect to companies operating cable radio and/or television systems, the total direct and indirect holdings by foreign investors may not exceed 60 percent of the total shares issued, and direct foreign shareholding may not exceed 20 percent. With respect to satellite broadcasting companies, direct foreign shareholding may not exceed 50 percent.

Separate rules exist for Chunghwa Telecom, a legacy carrier that is partially owned by the Taiwan Ministry of Transportation and Communications and controls 93 percent of the fixed line telecommunications market in Taiwan. The total direct and indirect holdings by foreign investors may not exceed 55 percent, 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 childcare.

Foreign ownership in telecommunications, power transmission and distribution, piped distribution of natural gas, and high-speed rail is limited to 49 percent of the total shares issued. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

Taiwan's Ministry of Economic Affairs has proposed amendments to the Statute for Investment by Foreign Nationals to bolster inbound investment, including an amendment that would eliminate pre-investment approval requirements for investments under \$1 million. As of December 2019, the proposed amendments were still pending final approval in the Legislative Yuan.

Regulatory and legislative scrutiny of select investments contributes to ongoing concerns about the predictability of Taiwan's investment approval procedures. It also gives rise to questions about the Taiwan

authorities' openness to foreign investment in areas deemed sensitive, such as the media industry and transactions involving private equity. Approval of foreign investment involving private equity investors in these sectors can be subject to lengthy review periods, redundant requests for information from the authorities, and intervention from elected officials outside of normal regulatory channels. The United States has repeatedly raised the need for transparency and consistency in Taiwan's investment review process.

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 July 2015, Taiwan's MOHW announced that it would extend the pilot drug expenditure target (DET) program by two years (*i.e.*, through 2015 and 2016). The introduction of the DET pilot program in 2013 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, the types of actions to be taken if targets are exceeded, and the impact of orphan drug and newly introduced vaccine expenditures on the global budget of the National Health Insurance Administration (NHIA).

In response to stakeholders' requests, NHIA announced in September 2017 that the DET pilot program would continue through December 31, 2019. The 2018 target budget was set to be NTD 155.95 billion (approximately \$5.2 billion). However, because the actual drug expenditure in 2018 was NTD 194 billion (approximately \$5.83 billion), NHIA announced in January 2019 plans for drug price cuts, effective April 1, 2019. After learning that the 2019 price for certain drugs would be cut, some foreign companies announced that they would stop supplying those products to Taiwan.

In addition to addressing drug price cuts, U.S. stakeholders have urged the Taiwan authorities to improve the co-payment mechanism so that patients are given options for receiving better treatments. They have also suggested that an information platform between TFDA and NHIA be established for the facilitation of new-drug applications.

Medical Devices

Taiwan is a significant market for U.S. medical device exports. Longstanding concerns persist over Taiwan's systems for medical device product license approvals and pricing review mechanisms. Manufacturing facility registration (known as Quality Systems Documentation, or QSD) is mandatory in Taiwan, regardless of whether a medical device is already on the market, and re-registration is required every three years. Although TFDA makes available a simplified application process for regulatory review of medical devices, U.S. manufacturers continue to express concerns with documentation requirements that effectively limit the number of products eligible to benefit from the program. For example, while TFDA accepts copies of the U.S. Food and Drug Administration (FDA) medical device Establishment Inspection Reports (EIRs) of U.S. manufacturers exporting to Taiwan in lieu of QSD for the simplified mode of review, TFDA requires EIRs to have been issued within the last three years and to be accompanied by an ISO 13485 certificate. Because the FDA conducts facility inspections using a risk-based approach, rather than by inspecting each facility at a regular interval, only a small fraction of U.S. products is able to produce the EIR documentation required to qualify for Taiwan's simplified review. The United States has indicated that adoption of audits performed under the International Medical Device Regulatory Forum's Medical Device Single Audit Program in lieu of the FDA's EIRs would simplify procedures.

Moreover, simplified product registration for specific classes of medical devices is only available to applicants who submit a Certificate of Free Sale/Certificate to Foreign Government from both the United States and the European Union (EU). No other jurisdiction in the world has such a requirement. This requirement would exclude manufacturers that choose to seek product approval only in either the United States or the EU, as well as manufacturers that choose to seek approval in the two markets at different times.

Taiwan has introduced self-pay and balance billing as mechanisms to enable patients to choose medical devices that are not paid in full by NHIA. Self-pay is available to implanted devices and a range of other commonly used medical devices that are not approved for NHIA reimbursement. These medical devices must be issued a self-pay code. However, self-pay is currently not available to a range of non-implantable devices. According to U.S. stakeholders, 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-pay codes for urgent or high-demand medical devices within two months of application in April 2014. Temporary self-pay codes for new medical devices cannot be issued until NHIA completes review of new therapeutic procedures in which the medical device is used. U.S. industry has suggested that increased process transparency and faster issuance of temporary self-pay codes are needed for new procedures to accelerate patient access to new devices.

The balance billing mechanism, introduced in January 2013, allows partial patient self-pay for high-end devices or new technologies. NHIA has the authority to introduce price caps on new balance billing items. Transparency and due process mechanisms are critical in this process, and U.S. stakeholders have expressed concern that the current balance billing system does not effectively distinguish among devices of differing levels of technological sophistication and effectiveness. In 2014, NHIA established a website to help consumers compare the cost of devices at different hospitals, in an effort to address consumer concerns without resorting to setting a balance billing cap. In 2016, 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.

Transparency

In September 2016, Taiwan's Executive Yuan announced the extension of the mandatory notice-and-comment period from 14 days 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 could potentially provide enhanced opportunities for stakeholder input, implementation has been inconsistent.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was \$20.2 billion in 2019, a 3.8 percent increase (\$729 million) over 2018. U.S. goods exports to Thailand were \$13.3 billion, up 6.9 percent (\$860 million) from the previous year. Corresponding U.S. imports from Thailand were \$33.5 billion, up 5.0 percent. Thailand was the United States' 25th largest goods export market in 2019.

U.S. exports of services to Thailand were an estimated \$3.0 billion in 2018 (latest data available) and U.S. imports were \$4.3 billion. Sales of services in Thailand by majority U.S.-owned affiliates were \$5.3 billion in 2017 (latest data available), while sales of services in the United States by majority Thailand-owned firms were \$189 million.

U.S. foreign direct investment (FDI) in Thailand (stock) was \$17.7 billion in 2018, a 17.7 percent increase from 2017.

TRADE AGREEMENTS

Thailand is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Thailand, has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. Separate from its ASEAN-based trade agreements, Thailand has concluded a number of bilateral trade agreements, including ones with Australia, Chile, India, Japan, Peru, and New Zealand. Thailand is exploring possible accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Thailand has also engaged in discussions to negotiate free trade agreements with the European Union, Pakistan, Sri Lanka, and Turkey.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Thailand's average Most Favored Nation (MFN) applied tariff rate was 9.6 percent in 2017 (latest data available). Thailand's average MFN applied tariff rate was 24 percent for agricultural products and 7.3 percent for non-agricultural products in 2017 (latest data available). Thailand has bound 75.2 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 27.9 percent.

High tariffs in many sectors continue to hinder access to the Thai market for many U.S. 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. For example, Thailand applies import tariffs of 80 percent on motor vehicles, 60 percent on motorcycles and certain clothing products, and 54 percent to 60 percent on distilled spirits. 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, antimalarials, and antiretrovirals, which are exempt.

MFN applied tariff rates on imported processed food products range from about 30 percent to 50 percent. Tariffs on meats, fresh fruits and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high. For corn, the in-quota tariff is 20 percent, and the out-of-quota tariff is 73 percent. The type of potato used to produce frozen French fries, for example, is not produced in Thailand, yet imports of these potatoes face a 30 percent tariff. Tariffs on apples and almonds are 10 percent, while duties on pears, cherries, citrus, prepared almonds, and table grapes range from 30 percent to 40 percent.

Import Fees

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee level was set in October 2016 at 7 baht per kilogram (\$215 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kg (\$92/MT) for imported uncooked meat for purposes other than food or feed. These fees appear to be disproportionate to the cost of services rendered. Under the Thai Animal Epidemics Act of 2014, DLD has discretionary authority to increase these import fees up to five-fold. The United States continues to press Thailand to address concerns about the apparently discriminatory nature of these fees.

Nontariff Barriers

Import Licensing

Import licenses are required for the importation of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, and agricultural items. In some cases, imports of certain items not requiring licenses are subject to extra fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws.

Thailand imposes domestic purchase requirements on importers of several products subject to tariff-rate quotas, including soybeans and soybean meal.

Customs Barriers and Trade Facilitation

Thailand's provision of incentives to customs officials who initiate investigations or enforcement actions creates conflicts of interest and encourages customs investigations for personal financial gain. U.S. companies report concerns about corruption, and the cost, uncertainty, and lack of transparency associated with the customs penalty/reward system. Thailand is the only major trading nation that still has such an incentive system, which has been a cause of serious concern for many years among Thailand's trading partners. Ostensibly to address these problems, at least in part, Thailand adopted a new Customs Act on November 13, 2017. The Act removes the Customs Department Director General's discretion to increase the customs value of imports; it also reduces the percentage of remuneration awarded to officials and non-officials from 55 percent to 40 percent of the sale price of seized goods (or of the fine amount) with a cap of THB 10 million (approximately \$330,000). While a welcome development, the reduction of this remuneration is insufficient to address the issue of personal incentives. The United States will continue to press Thailand in bilateral and multilateral fora to eliminate this counterproductive incentives system.

The United States continues to have serious concerns about the lack of transparency in Thailand's customs regime and the improper exercise of significant discretionary authority by Customs Department officials. The U.S. Government and stakeholders also have expressed concern about Thailand's inconsistent application of the transaction valuation methodology, as well as the repeated use of arbitrary or fictitious values by the Customs Department.

In September 2019, the Customs Department held public consultations soliciting comments on the customs penalty/reward system as the Customs Department considers possible amendments to the 2017 law and related regulations in an effort to increase fairness and reduce corruption. The U.S. Government was among those who provided comments via the public consultation's online channel.

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, pork, cooking oil, and wheat flour), liquefied petroleum gas, medicines, and sound recordings. The controlled list is reviewed at least annually, but the price-control review mechanisms are non-transparent. In practice, Thailand's government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum and aviation sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Import Ban on Agricultural Chemicals

Thailand's National Hazardous Substances Committee (NHSC) voted on October 22, 2019 to recategorize three agricultural chemicals, or active ingredients (AI), from Type 3 toxic substances to Type 4, a category of chemicals that is prohibited from production, import, export, or possession. The three agricultural chemicals included two herbicides (glyphosate, paraquat), and an insecticide (chlorpyrifos), all of which had been previously permitted within Thailand. The recategorization of these chemicals would have resulted in the Thai Food and Drug Administration applying a zero tolerance maximum residue level (MRL) for these three AIs in all domestic and imported foods and agricultural products for human consumption. However, on November 27, 2019, the NHSC reversed its earlier ruling and overturned the ban on glyphosate, as well as delayed the implementation of bans on chlorpyrifos and paraquat until June 1, 2020. Glyphosate remains a Type 3 substance and its MRLs are unchanged. The Thai Ministry of Agriculture and Cooperatives is to develop solutions to replace paraquat and chlorpyrifos.

Labeling Requirements on Alcoholic Beverage

After Thailand's Office of Alcohol Control, which is under the Department of Disease Control, imposed its 2015 regulation on "The Rules, Procedure and Condition for Labels of Alcoholic Beverages," two guidelines were developed in 2016 and 2017 to clarify specific enforcement procedures. The guidelines were intended to control the language and images used on the labels of alcoholic beverages. However, certain requirements in the measure were not clearly defined, which led to uncertainty among beverage producers. The United States raised concerns about the potential for uneven application of the measure given the unclear language. The lack of a clear definitions and interpretation of the 2016 and 2017 guidelines has created difficulties in implementing and enforcing the rule.

Import Regulations on Alcohol Certificate of Analysis

On June 25, 2019, Thailand began implementation of the Finance Ministry's "Ministerial Notification on Importation of Spirits into the Kingdom of Thailand, BE 2560 (2017). This measure requires an alcohol certificate of analysis (COA) or product-sample testing to be submitted for import permit applications. Although Thailand has a waiver provision to recognize certificates from private laboratories employing U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) certified chemists, many of the required substance levels under the Thai regulation are typically not tested for in the United States. The U.S. Government is

concerned that it will be difficult to process samples in a timely manner. In addition, differences in the environment and testing methods between Thailand and the United States could lead to inconsistencies in the results from Thai laboratories. The U.S. Department of Agriculture (USDA), U.S. Food and Drug Administration (FDA), and TTB will discuss with the Thai Excise Department the proposed regulations in an effort to avoid trade disruptions.

Biotechnology

While Thailand's current regulations prohibit the cultivation of genetically engineered (GE) crops, it allows the import of processed food containing GE ingredients, GE cotton lint, GE soybeans and corn for feed and industrial uses.

On July 5, 2019, Thailand notified the WTO of a draft GE food notification regulation. Developers of GE crops and Thai industry stakeholders are concerned that, if implemented, the regulation would delay or disrupt the trade flow of soybeans, corn, and all processed foods containing GE organisms and microorganisms into Thailand. The United States has submitted comments to the WTO on this notification and will continue to monitor the implementation process.

Sanitary and Phytosanitary Barriers

Audits of Facilities for Imports of Animal-Derived Products

On July 25, 2017, the Department of Livestock Development (DLD) officially listed seven animal-derived products, including meat, meat and bone meal, and feather meal, the importation of which is subject to a facility audit in the exporting country. Each audit approval is valid for five years. In addition, under a separate notification on the same date, the DLD imposed five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products, including poultry meat meal, poultry by-products meal, feather meal, blood meal, plasma powder, egg powder, poultry fats and/or oils, and palatability enhancers or flavoring agent innards. The United States has pressed Thailand to adopt a systems approach on audits to reduce the expense and burden of this requirement. The DLD conducted a fact finding visit to the United States in August 2019 to prepare for a possible systems-approach audit for U.S. animal protein products in 2020.

Import Restrictions on Beef and Beef Products

Thailand restricts beef offal imports. USDA requested clarification on the definition of muscle cuts, and DLD confirmed that fresh tongues, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are permissible within this category. USDA is working with DLD to gain market access for edible and inedible U.S. beef offal products. In September 2018, DLD conducted an audit of the U.S. production system and transmitted its draft findings to the United States in March 2019. Within the report, Thailand notably requested confirmation that U.S. beef and beef products for export to Thailand were not derived from cattle treated with beta-agonists, including ractopamine. Considering that this condition could be an effective barrier for the entry of U.S. beef offal into the Thai market (as it is for pork), USTR and USDA are working with Thai DLD to resolve this issue.

Plant Quarantine Restrictions

Thailand currently requires fumigation for shipments of Dried Distiller Grains (DDGs) due to the detection of quarantine pests. The United States is working closely with Thailand to arrive at science-based fumigation requirements for U.S. DDG exports to Thailand that include phosphine fumigation. The United States will continue to advocate for science-based fumigation requirements for DDG shipments to Thailand.

Import Restrictions on Pork

In 2012, after the Codex Alimentarius Commission established 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 also continues to raise pork access at Trade and Investment Framework Agreement (TIFA) meetings, most recently in July 2019. At the 2019 TIFA meeting, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine.

Import Bans on Poultry

Thailand imposes bans on U.S. live poultry and poultry meat due to the sporadic presence of highly pathogenic avian influenza (HPAI) in the United States, notwithstanding World Organization for Animal Health (OIE) guidelines that recommend importing countries regionalize their bans rather than apply them on a country-wide basis. Thailand has banned U.S. turkey meat since late 2014. After a few years of effort, Thailand sent delegates to conduct a production-system audit of U.S. turkey in July 2019. Thailand should inform the United States of the audit's outcome by early 2020.

SUBSIDIES

The Thai government operates various subsidy programs under the Investment Promotion Act (1977) (Amended 1991, 2001, and 2017) (IPA), which are administered by the Board of Investments (BOI). Under the IPA, the BOI exercises discretion in providing various incentives for, among other things, passenger cars and large-size motorcycles, energy conservation, alternative energy and eco-friendly products, high-technology businesses, and new product manufacturing. These incentives include reductions and exemptions from income tax and import duties, double deductions for transportation, electricity, and water costs, and deductions for infrastructure installation and construction costs, in addition to normal depreciation. Additionally, pursuant to the Industrial Estate Authority Act (No. 4), B.E. 2550 (2007), the Industrial Estate Authority of Thailand operates an incentive program called the Skill, Technology and Innovation Scheme, which provides supplemental income tax exemptions to promote technological innovation.

GOVERNMENT PROCUREMENT

On August 23, 2017, the Public Procurement Act replaced the Prime Minister's 1978 Procurement Regulations as the primary legal authority governing public sector procurement. The act allows for the consideration of factors other than cost in procurement decisions.

The Thai government introduced its Thai Innovation List in 2016 to develop domestic industrial capacity in several innovation-centered economic sectors, including pharmaceuticals and medical products. Only authorized Thai majority-owned companies may list products on the Innovation List, which grants special government procurement privileges for such products. Thai government agencies and public hospitals must allocate at least 30 percent of their budget for pharmaceutical products, medical products, and nutritional supplements on this list. There are over 120 products, all of which are generic, included on the list.

Thailand is not a Party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since June 2015.

INTELLECTUAL PROPERTY PROTECTION

Thailand remained on the Watch List in the 2019 Special 301 Report. While Thailand has made progress on intellectual property (IP) protection and enforcement, including by improving coordination on enforcement efforts to combat counterfeit and pirated goods and by taking legislative and administrative steps to address backlogs for patent and trademark applications, concerns remain. The United States remains concerned about the availability of counterfeit and pirated goods, both in physical markets and online, as highlighted by the continued inclusion of Patpong Market in Bangkok in the Out-of-Cycle Review of Notorious Markets. Other U.S. concerns include the widespread use of unlicensed software in both the public and private sectors, extensive cable and satellite signal theft, camcording of movies, overly broad exceptions to laws that penalize the unauthorized circumvention of technological protection measures, and continuing lack of effective enforcement against online piracy and counterfeiting.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States urges Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines, including on pharmaceutical issues.

SERVICES BARRIERS

Audiovisual Services

The Thai Ministry of Culture is in the process of reviewing the Motion Picture and Video Act, which gives Thailand's Film Board the authority to establish ratios and quotas limiting the importation of foreign films, although the Film Board has not exercised that authority to date as of the end of 2019. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Express Delivery

Private express delivery companies must pay postal fees and penalties for delivery of documents in Thailand. These fines amount to an average of 37 baht per item (slightly more than \$1) for shipments that weigh up to two kilograms. Thailand also imposes a 49 percent limit on foreign ownership of companies providing land transport services.

Financial Services

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 banking licenses to operate as a subsidiary and supply the full scope of services 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 bank branches and subsidiaries can supply all types of financial services offered by local banks. In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premise ATMs, and appointed agents. As of the end of 2019, foreign subsidiaries may operate up to 40 service points, while foreign branches may open a maximum of three service points.

Foreign investors are able to establish wholly-owned bank subsidiaries. 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.

Since 2013, Thailand has required processing in Thailand of all retail domestic debit electronic payment transactions for debit cards issued in Thailand so that foreign suppliers are precluded from supplying these services cross-border and must establish a local presence and build processing facilities in Thailand.

Foreign equity in life and non-life insurance companies is limited initially to less than 25 percent of the total number of voting shares that have been sold, and foreign directors may hold no more than 25 percent of the board of director seats. However, in 2015 and 2016, the Thai government relaxed the criteria for the Office of Insurance Commission (OIC) to allow a company to increase the foreign equity permitted to up to 49 percent and the seats held by foreign directors to up to one-half of the board, if the company meets conditions relating to improving efficiency and competitiveness. In addition, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector, the Ministry of Finance, with the recommendation of the OIC, may permit a company to have foreign ownership exceeding 49 percent or foreign directors comprising more than one-half of the board or both. The OIC is in the process of amending the law to relax restrictions on the foreign ownership of insurance companies. The draft amendment would grant the OIC Board, instead of the Ministry of Finance, the authority to approve the increased foreign equity and foreign directors. Nonetheless, the OIC approval must be in accordance with criteria, procedures, and conditions or timeframe determined by the Ministry of Finance.

Professional Services

Legal Services

U.S. investors may own law firms in Thailand only if they enter into commercial association with local attorneys or local law firms, and foreign nationals (with the exception of “grandfathered” non-citizens) may not provide legal services. In certain circumstances, foreign attorneys can obtain a limited license entitling them to offer advisory services in foreign and international law.

Accounting Services

Thailand’s Foreign Business Act reserves accounting services for Thai nationals unless specific, onerous conditions are met. As a result, foreign nationals 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. Foreign nationals are permitted to own only up to 49 percent of an accounting professional service and only through a limited liability company registered in Thailand.

Engineering Services

Thailand’s Engineering Act assigns four classifications of engineering professionals: senior professional engineer, professional engineer, associate engineer, and adjunct engineer. Foreign engineers can only be certified as adjunct engineers, the lowest classification, regardless of qualifications. Applicants must pass an oral exam in Thai language (an interpreter with no engineering background can be used during the oral exam). Businesses have expressed concerns that the restrictions allow foreigners to work only in a small

set of civil engineering services, and that local members of the profession control the onerous process in order to limit competition.

Telecommunications Services

Thai law allows foreign equity up to 49 percent in basic telecommunications service providers and higher levels of foreign equity for providers of value-added services. This constitutes an improvement on the 20 percent foreign equity cap listed in Thailand's provisional 1997 WTO commitments. However, Thailand has not revised its WTO General Agreement on Trade in Services (GATS) schedule, as it committed to 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 operators, which the National Broadcasting and Telecommunications Commission has defined as holding at least half of all voting rights, having controlling power over the majority vote in shareholder meetings, or having the ability to appoint or remove half of directors.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Technology

Thailand's National Legislative Assembly (NLA) passed the National Cybersecurity Act (CSA) on February 28, 2019, and it entered into force in May 2019. The law is designed to strengthen the cybersecurity capabilities of government agencies. U.S. stakeholders have raised concerns that the law would grant a new Office of the National Cybersecurity Committee (also referred to as the National Cybersecurity Agency) broad powers to demand confidential and sensitive information without sufficient protections to circumscribe such access or to appeal the Committee's decisions.

On February 28, 2019, the NLA passed the Personal Data Protection Act (PDPA). The PDPA will enter into force in May 2020. The law creates a Personal Data Protection Committee (PDPC) and Expert Committees that are empowered to fine companies for noncompliance (up to THB 5 million or approximately \$ 158,000) and to provide information to law enforcement for use in criminal cases, with penalties to include imprisonment up to one year and/or fines up to THB 1 million (approximately \$31,600). Formation of the PDPC is underway as of February 2020. U.S. stakeholders have raised concerns that the law creates unreasonable burdens and legal uncertainty in the technology sector, raises potential impediments to international data transfers, and gives over-broad powers to the PDPC and Expert Committees.

Internet Services

The Computer Crime Act of 2007, amended in December 2016, greatly expanded the Thai government's authority to regulate online content. Among other changes, the amendments led to the creation of a "Computer Data Filtering Committee," which has the power to obtain court approval to block a range of websites, including those that the Committee finds disseminate information violating public order. There has never been a successful appeal or reversal of the Committee's decisions.

The amended Computer Crime Act raises particular concerns for online services that host non-IP-protected user-generated content. For the first time, the 2016 amendments established a shield from liability with respect to non-IP-protected content 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 non-IP user-generated content, discouraging investment and encouraging proactive censorship by consumers.

Some U.S. stakeholders also note that, with respect to copyright-protected content, the amended Computer Crimes Act has improved the environment for enforcement against online piracy.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, a foreigner (defined as a person who is not a Thai national, a company that is not registered in Thailand, or a company in which foreign ownership accounts for 50 percent or more of total shares) must obtain an alien business license from the relevant ministry before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in most sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. However, U.S. investment is prohibited under the AER in the following areas: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, domestic trade in indigenous agricultural products, and the practice of professions reserved for Thai nationals.

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 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.

There are concerns about recent changes to the Drug Act, which came into effect in October 2019 that could affect negatively the registration of patented medicines. The amendment requires applicants for drug registration to disclose patent documents as part of their dossiers. While sequential ministerial notifications provided some information about the revised registration process, pharmaceutical companies remain wary that the status of drug registrations completed prior to the amendment remains unclear.

Bribery and Corruption

Despite ongoing legislative and administrative efforts to address corruption, the issue continues to hamper Thailand’s economy and trade. The National Anti-Corruption Commission (NACC) is the primary body vested with powers and duties to counter corruption in the public sector. However, several agencies have jurisdiction over corruption issues, and their actions are not always complementary. Thai law enforcement’s investigative and prosecutorial capacity is limited, and Thai laws focus predominantly on abuse of office rather than financial or asset-related malfeasance. Anticorruption mechanisms continue to

be employed unevenly and for political purposes, and the lack of transparency in many administrative procedures serves to facilitate corruption.

On July 22, 2018, a new anticorruption law (known officially as the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption B.E. 2561 (2018)) came into effect, repealing and replacing the 1999 Organic Act on Counter Corruption and its various amendments. The anticorruption law maintains a key provision criminalizing bribe-giving by legal entities but expands the definition of the legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, etc.). The mandatory fines for bribery are at least an equal amount of the benefit received from the corrupt act, but not more than twice that amount. The 2018 law allows NACC to seek international cooperation in investigations.

TUNISIA

TRADE SUMMARY

The U.S. goods trade deficit with Tunisia was \$8 million in 2019, a 83.7 percent decrease (\$43 million) over 2018. U.S. goods exports to Tunisia were \$461 million, down 22.8 percent (\$137 million) from the previous year. Corresponding U.S. imports from Tunisia were \$470 million, down 27.7 percent. Tunisia was the United States' 105th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Tunisia (stock) was \$251 million in 2018, a 10.0 percent decrease from 2017.

TRADE AGREEMENTS

Tunisia has had an Association Agreement with the European Union (EU) covering the duty-free trade of industrial goods since 1998, with separate arrangements for agricultural, agrifood, and fisheries products. Tunisia began negotiations with the EU in April 2016 on a Deep and Comprehensive Free Trade Agreement (DCFTA) that would go beyond the current Association Agreement to liberalize trade in agriculture and services and include disciplines on labor and the environment. Tunisia also has free trade agreements that grant tariff preferences for imported goods from European Free Trade Association members, Turkey, and several countries in North Africa. Tunisia has bilateral trade agreements with approximately 80 countries. In March 2018, Tunisia signed the African Continental Free Trade Agreement with 43 other African Union countries. In March 2019, the Tunisian Parliament ratified accession to the Common Market for Eastern and Southern Africa.

IMPORT POLICIES

Tariffs

Tunisia's average Most-Favored Nation (MFN) applied tariff rate was 11.6 percent in 2016 (latest data available). Tunisia's average MFN applied tariff rate was 31 percent for agricultural products and 8.3 percent for non-agricultural products in 2016 (latest data available). Tunisia has bound 58 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 57.9 percent.

Imported goods in Tunisia can be subject to tariff rates as high as 200 percent. Tunisia's 2018 Finance Law increased tariffs on certain products. Tariff rates increased to 30 percent on products such as consumer washing machines and video monitors. In addition, some products originally exempt are now subject to a 15 percent tariff, such as: soda ash, lubricating oils, soap, pesticides, natural pearls, and dishwashers. Agricultural goods are subject to customs tariffs ranging from zero percent to 36 percent, with most agricultural imports at the high end of that range. Goods are also subject to a customs administrative fee amounting to 3 percent of the total duties paid on the import. Prior to the 2018 increases outlined above, Tunisia had reduced its average MFN applied tariffs from about 45 percent in 2006 to 20 percent in 2017.

Nontariff Barriers

Tunisia maintains a number of nontariff barriers. Approximately three percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Ministry of Trade. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods have to request an allotment from the government to receive an import

license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade. Several agricultural products are also subject to burdensome technical import requirements set out in a Book of Specifications.

Tunisian law prohibits the export of foreign currency from Tunisia as payment for imports prior to the presentation to a bank of documents confirming shipment of the merchandise from the country of origin. In addition, the Central Bank of Tunisia prohibits Tunisian purchasers from using foreign currency to pay for specific imported goods until their banks confirm that they have sufficient foreign currency in their accounts. These requirements remain a source of confusion and difficulty for some U.S. companies.

In November 2018, the Ministry of Commerce announced it would impose controls on a variety of imported agricultural and nonagricultural goods according to technical specifications in an attempt to reduce Tunisia's trade deficit.

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports. Some companies complain that they face pressure to lower drug prices in order to obtain market authorization and, following authorization, encounter reimbursement delays of between six months to one year.

Customs Barriers and Trade Facilitation

Customs processing remains cumbersome, labor intensive, and, for the most part, reliant on the review of paper documents, despite some steps in 2019 to digitize certain custom processes. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Risk management and other targeting is primarily conducted manually by reviewing large volumes of entry documents in paper form, although Tunisia has expanded its simplified customs clearance process for authorized operators from 24 companies in 2018 to 56 companies as of August 2019.

In February 2017, Tunisia domestically ratified the WTO Trade Facilitation Agreement (TFA). Although Tunisia has not yet presented its instrument of ratification to the WTO, on August 21, 2019, it self-designated an implementation schedule for each obligation under the TFA. Tunisia is overdue in submitting three transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) the use of customs brokers (Article 10.6.2); and (3) customs contact points for the exchange of information (12.2.2). These notifications were due to the WTO on February 22, 2017, according to Tunisia's self-designated implementation schedule.

Tunisia notified the latest update to its customs valuation legislation in May 2011 but has not yet responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement is being implemented.

SANITARY AND PHYTOSANITARY BARRIERS

In 2018, the United States submitted written comments through the WTO on a number of sanitary and phytosanitary measures not formally notified by Tunisia to the WTO, including a ban on imports of U.S. citrus, apples, and pears, as well as a strict tolerance level for deoxynivalenol in wheat.

SUBSIDIES

Companies producing for the export market benefit from duty-free import of capital goods with no local equivalents. These companies also benefit from a full tax and duty exemption on raw materials, semi-finished goods, and services necessary for operation.

The Export Promotion Fund (FOPRODEX), a state fund managed by the Export Promotion Center (CEPEX), provides financial support to Tunisian resident exporting companies. This fund partially finances a range of promotional actions in target countries, with a preferential rate for exports to sub-Saharan African countries. Activities receiving partial support include market research, participation in trade fairs and international bids, visits for international buyers, and the development of marketing and branding materials.

GOVERNMENT PROCUREMENT

The High Committee on Public Procurement, within the Prime Ministry, represents the highest authority for examination, auditing, recourse, and assistance in all public procurement operations. As of September 2018, all public procurement operations are conducted electronically through a bidding platform called the Tunisia Online E-Procurement System. Winning bidders are selected on the basis of “the lowest bid that meets the specifications.” However, this does not apply to procurements by the Ministry of Defense, Ministry of Interior, three major state banks, and other ministries when their procurements relate to security. Moreover, Tunisia’s public procurement law gives preference to national products over foreign products of equal quality, provided the domestic products are not more than 10 percent more expensive.

Tunisia is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Although Tunisia has made some progress with respect to intellectual property (IP) protection and enforcement, the prevalence of, and trade in, counterfeit and pirated goods remains a concern. Furthermore, U.S. industry reports that Tunisia does not provide for adequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of follow-on pharmaceutical products, with limited exceptions. The United States will continue to engage with Tunisia to improve IP protection and IP rights enforcement in the region.

BARRIERS TO DIGITAL TRADE

The Tunisian dinar is a non-convertible currency, so Tunisian citizens cannot open foreign currency bank accounts, with some exceptions. This limits Tunisians’ ability to purchase goods and services online or receive payments from foreign digital firms. Foreign investors and resident exporters have the right to hold foreign currency accounts with authorization from the Central Bank of Tunisia. Individuals of Tunisian nationality and any company resident in Tunisia operating in the telecommunications, information technology, education and academia, advice and research sectors can use “Digital Technology Charge Cards” issued by the Ministry of Communication Technologies and Digital Economy to make international purchases of certain digital products and services. Individual users are limited to the equivalent of 1,000 dinars (approximately \$350) in annual purchases, while companies are limited to 10,000 dinars (approximately \$3,500).

INVESTMENT BARRIERS

Entering Tunisia’s domestic market, particularly the services sector, remains difficult for foreign investors. Foreign ownership is limited to 49 percent in many sectors, and the process of investing is particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia’s investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian government, which assesses the potential benefit of the investment to the Tunisian economy. Investors in Tunisia frequently complain of delays, lack of transparency regarding rules and fees,

competition from state-owned enterprises, and other bureaucratic complications in the process of registering a business.

Provisions in Tunisian commercial legislation designed to protect minority shareholder interests confer disproportionate influence on Tunisian minority partners.

On April 1, 2017, a new Tunisian Investment Law intended to facilitate increased foreign investment into Tunisia took effect. In May 2018, the government adopted ministerial decree No. 417, publishing a list of 100 economic activities in sectors requiring government authorization for investment. The sectors include: natural resources and construction materials; transportation by land, sea, and air; banking; finance; insurance; hazardous and polluting industries; health; education; telecommunications; and services.

ANTICOMPETITIVE PRACTICES

State-owned enterprises (SOEs) maintain monopolies in key economic sectors considered sensitive by the government, such as railroads, water and electricity distribution, and power generation. These monopolies limit opportunities for U.S. and other foreign companies in these sectors. Importation of basic staples and strategic items such as cereals, sugar, edible oil, and steel also remain under SOE control.

OTHER BARRIERS

Although the government of Tunisia continues to make efforts to expand opportunities for businesses, U.S. companies across a range of sectors report that cumbersome, time-consuming government processes and inconsistent regulatory practices make it difficult to enter and operate in the Tunisian market.

TURKEY

TRADE SUMMARY

The U.S. goods trade deficit with Turkey was \$599 million in 2019, a 723.0 percent increase (\$526 million) over 2018. U.S. goods exports to Turkey were \$10.0 billion, down 2.1 percent (\$217 million) from the previous year. Corresponding U.S. imports from Turkey were \$10.6 billion, up 3.0 percent. Turkey was the United States' 28th largest goods export market in 2019.

U.S. exports of services to Turkey were an estimated \$3.1 billion in 2018 (latest data available) and U.S. imports were \$1.8 billion. Sales of services in Turkey by majority U.S.-owned affiliates were \$4.2 billion in 2017 (latest data available), while sales of services in the United States by majority Turkey-owned firms were \$101 million.

U.S. foreign direct investment (FDI) in Turkey (stock) was \$4.7 billion in 2018, a 9.1 percent increase from 2017. U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and finance and insurance.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

In accordance with its customs union agreement with the European Union (EU), Turkey exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to third-country non-agricultural imports, including those from the United States. Turkey also exempts from tariffs non-agricultural products imported from other trading partners with which it has concluded free trade agreements.

Turkey's average MFN applied tariff rate was 10.7 percent in 2018 (latest data available). Turkey's average MFN applied tariff rate was 41.8 percent for agricultural products and 5.8 percent for non-agricultural products in 2018 (latest data available). Turkey has bound 50.5 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 28.9 percent. Turkey's average WTO bound rates are 61.8 percent and 17.3 percent, for agriculture and non-agriculture, respectively.

Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 25 percent to 146 percent, while the range for poultry tariffs is between 23.5 percent and 65 percent. On January 16, 2019, the Turkish government implemented new tariff quotas for calendar year 2019. In addition to the zero tariff-rate quotas (TRQs) on wheat, barley, and corn that began in 2018, the government also added pulses and rice to the list of commodities eligible for zero duties in a quota scheme. The government will apply zero percent tariff rates through December 31, 2020, for wheat imports up to 1,500,000 tons, barley imports up to 700,000 tons, corn imports up to 700,000 tons, rice imports up to 100,000 tons, and pulse imports up to 100,000 tons.

Turkey has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors. Since mid-2014, Turkey has increased tariffs by an average of 26 percent on products classified in 50 Harmonized System chapters, affecting a wide range of sectors, including furniture, medical equipment, tools, iron, steel, footwear, carpets, and textiles.

The Turkish government also levies high tariffs, excise taxes, and other domestic charges on imported alcoholic beverages and tobacco products that increase wholesale prices for these products considerably.

On June 21, 2018, Turkey imposed additional duties, in retaliation against the President's decision in March to take action on imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended, that threaten to impair U.S. national security. Turkey imposed duties on more than 20 tariff lines for U.S.-originating goods, including a 60 percent tariff on passenger cars and parts, a 70 percent tariff on alcoholic drinks, and a 30 percent tariff on leaf tobacco.

Taxes

On November 1, 2018, Turkey lowered its special consumption tax by 15 percentage points on motor vehicles with engines smaller than 1600cc. The discount on the special consumption tax ended as of July 1, 2019. The special consumption tax on motor vehicles currently ranges between 45 percent and 175 percent, depending on engine size, and has a disproportionate effect on automobiles imported from the United States, which are generally larger models.

Nontariff Barriers

Import Restrictions

Turkey in 2015 banned the import of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Turkey also requires that construction equipment, tractors, and agricultural equipment be imported during the year in which individual units are manufactured, effectively limiting (given long lead times for shipment) the amount of U.S. exports of such equipment to Turkey.

Import Licensing

Turkey requires import licenses for some agricultural products and for various products that need after-sales service such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade.

Customs Barriers and Trade Facilitation

Turkish documentation requirements for food imports are onerous, inconsistent, and non-transparent, often resulting in shipments delayed at Turkish ports. U.S. exporters of not only rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, but also industrial goods, have reported concerns with decisions by Turkish customs authorities on the valuation of some of their products.

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 the Turkish Ministry of Health (MOH) officials before their products can be authorized for sale in Turkey.

Prior to 2010, the 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 since 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. U.S. Government officials have made repeated requests, including at senior levels, to the Turkish government that it speed up the timeframe for market access approval. In response, the MOH has authorized parallel submission (rather than sequential submission) of GMP inspection and marketing approval applications for "Priority One" pharmaceuticals imported from U.S. and EU firms. While a positive step, the MOH has not yet applied the approach to all pharmaceutical product applications.

Cosmetics

In December 2018, Turkey issued draft amendments to its cosmetics regulation and conducted a domestic-only consultation. The draft amendment covers Turkey's market authorization requirements, including product filings, labeling and the requirement the certification of GMP. U.S. industry has expressed concern that the draft changes would require companies to disclose business confidential information related to product formulation and test data that is not typically required during product filing. U.S. industry reports that some elements proposed in the draft are already being implemented. The United States has raised concerns bilaterally and at the WTO Committee on Technical Barriers to Trade, including requesting that Turkey notify the draft amendments.

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 labels on certain food products include health warnings. The Turkish government, however, has provided no scientific evidence for requiring these health warnings.

In addition to these requirements, the Biosafety Law also mandates onerous traceability procedures for all movement of biotechnology-derived animal feed, including a requirement that each handler maintain traceability records for 20 years.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Although Turkey notified the Biosafety Law to the WTO Committee on Sanitary and Phytosanitary (SPS) Measures prior to its original enactment, the Turkish government has failed to notify subsequent revisions of the law and its implementing regulations and various regulatory controls. U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual biotechnology traits due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment of individual biotechnology traits, and concerns regarding the protection of applicants' confidential information.

Following the move to an Executive Presidency in Turkey in 2018, the Biosafety Board established under the Biosafety Law was abolished and the approval process and authority for biotechnology approvals is being updated. The former Biosafety Board rejected applications submitted by Turkish importers for approval of a number of corn and soybean biotechnology traits without providing scientific justification. To date, a total of 36 traits, of which 10 are soybean and 26 are corn, have been approved for use in animal feed in Turkey. No genetically engineered products have been approved for food use or cultivation. No traits have been approved since August 2017, which has led to severe market access problems for U.S. products, resulting in the quantity of U.S. soybean exports to Turkey falling by more than 99 percent from 2018 to 2019. Thirteen additional applications have been pending for years, despite the law's official 270 day approval timeline.

The Turkish government's delays in reaching approval decisions are exacerbated by its impractical low level presence policy. If a shipment tests positive for the presence of an unapproved biotechnology trait at any level, the cargo is rejected and cannot be used for feed or food. There is an exception to this prohibition for unapproved traits with pending approval applications for use in feed; such traits are allowed to be present up to a 0.1 percent threshold. For cargo intended to be used for feed there is tolerance for up to a 0.9 percent presence in a shipment of approved (but not declared) biotechnology traits, but it is unclear how this exception is being applied in practice.

Turkey has also imposed onerous and unpredictable biotechnology-focused testing requirements for certain U.S. food and feed imports. Turkish authorities began requiring testing of every shipment of U.S. wheat imports for any biotechnology content in 2013 following a single detection of an unapproved wheat biotechnology trait in a shipment from the United States. The testing has been limited to U.S. wheat imports, even though wheat imports from any other country would be equally as likely to test positive for trace amounts of unapproved biotechnology traits. The testing requirements have negatively affected U.S. wheat shipments to Turkey, as well as rice and other commodities. Turkey also requires certifications from the country of origin that products exported to Turkey have not been produced using microorganisms derived from agricultural biotechnology. Many products have been rejected at Turkish ports for lack of the required certifications.

Food Safety

Turkey's efforts to harmonize its national food safety laws with EU requirements have the potential to impede U.S. trade. For example, U.S. producers of table grapes have expressed concerns that Turkey's efforts to harmonize its pesticide maximum residue levels (MRLS) with EU MRLS have the potential to put imports from the United States at a disadvantage compared to imports from EU suppliers.

The importation of live animals and of animal products requires a control certificate from Turkey's Ministry of Agriculture and Forestry. The issuance of this certificate is not automatic.

Plant Health

Turkey has sporadically rejected imports of U.S. unmilled rice due to detection of white tip nematode. Turkey considers white tip nematode to be a quarantine pest despite the fact that this nematode is widespread in Turkey. Due to the risk of a detection of the nematode upon arrival, many U.S. rice exporters have stopped shipping to Turkey.

Due to an inconsistency in its harmonization with EU phytosanitary certificate requirements, Turkey requires a maximum 14-day interval from inspection date to export date, rather than from certificate issue date to export date. Due to internal transit times to ports, this can impact all U.S. plant commodities that are inspected at their point of cultivation prior to being shipped to U.S. ports for export to Turkey.

Animal Health

Turkey is an important transit point for U.S. poultry shipped to Iraq and the Middle East. Turkey's policy of banning the transit of poultry meat imports from high pathogenic avian influenza-affected U.S. states, as well as U.S. states with identified cases of avian influenza in wild birds or identified cases of low pathogenic avian influenza, do not appear to be consistent with the science-based recommendations of the World Organization for Animal Health (OIE).

SUBSIDIES

Turkey is significantly overdue on its required WTO notifications on agricultural domestic support. Although Turkey has large agricultural support programs in place, which include price support programs and input subsidies, Turkey has only submitted one recent update on domestic support programs to the WTO – its first in 14 years – in 2018. However, the notifications provided in that 2018 update only covered subsidies for the years 2001-2009; there were no updates regarding agricultural subsidies implemented over the last decade. The United States and other WTO members continue to regularly raise this transparency concern with Turkey at the WTO.

Additionally, U.S. exporters have expressed concerns about Turkey's subsidies and inward processing scheme for wheat. There is no monitoring within the scheme to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour; such monitoring is a required component of an inward processing scheme under the WTO Agreement on Subsidies and Countervailing Measures.

GOVERNMENT PROCUREMENT

Turkey is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 1996.

Turkish government contracting officials are authorized to issue tender documents with provisions that restrict foreign companies' participation and that award price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Additionally, Turkish procurement law sometimes requires government contracting agencies to accept only the lowest-cost bids in response to tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, *i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products.

Several other features of the Turkish procurement system have the effect of severely limiting the ability of U.S. companies to participate in government tenders. First, Turkish contracting agencies are able to impose "no-limitation-of-liability" clauses on successful bidders. Such clauses render contractors liable for all costs resulting from design or application errors or lack of supervision. Second, Turkish procurement law mandates the use of model contracts, *i.e.*, standard forms, which many government procuring agencies refuse to modify. These model contracts make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. Third, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies.

Turkish military procurement policy generally mandates the inclusion in contracts of various "commercial offset" requirements. These specifications typically encourage localization commitments by bidding firms, including in the areas of foreign direct investment and technology transfer. Such requirements can

dramatically increase costs for bidding firms, and have discouraged participation by some U.S. companies in Turkish commercial defense tenders. Non-military tenders, before 2014, also utilized commercial offset requirements, although not as frequently.

In February 2014, the Turkish parliament adopted an Omnibus Bill that gives civilian government ministries the authority to impose commercial offset requirements in procurement contracts. Similar to the military offset requirements, this law requires a foreign company that wins a Turkish government procurement contract to produce a certain percentage locally or with a local partner in order to provide its products and services. The government is focusing on implementing offset requirements in the pharmaceutical, medical devices, commercial aircraft, and energy sectors, among others.

INTELLECTUAL PROPERTY PROTECTION

In 2019, Turkey remained on the Watch List in the annual Special 301 Report in light of intellectual property (IP) rights issues that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Turkey of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the judicial system as a whole, including judges, prosecutors, and police, fails to adequately address IP-related crime. While the entry into force of Turkey's Industrial Property Law and implementing decrees brought industrial property rights under a single law, increased the capacity of the Turkish Patent Office, and improved the legal framework for technology commercialization and transfer, IP rights enforcement in Turkey still suffers from a lack of awareness and training among judges, as well as a lack of prioritization among government bodies of efforts to combat IP crimes.

U.S. pharmaceutical companies continue to raise concerns that Turkey does not adequately protect against the unfair commercial use, as well as unauthorized disclosure, of test or other data submitted to obtain marketing approval for pharmaceutical products. These stakeholders also stress that Turkey needs to encourage early resolution of pharmaceutical patent disputes and rescind policies that act to discourage imports in favor of domestic production of pharmaceutical products and medical devices.

SERVICES BARRIERS

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

Data localization requirements found in various Turkish laws and regulations restrict the free flow of data and hamper the ability of foreign suppliers of information and communications technology (ICT) services to access the Turkish market. In July 2019, Turkey's Office of the Presidency published a measure (Circular No. 2019/12) that prohibits public institutions and organizations from using cloud-computing services. The Circular also requires that certain critical information and data, such as health records and biometric data be stored domestically. In early 2018, the Capital Markets Board of Turkey published the "Communique on Information Systems Management," which requires publicly traded companies to keep their primary and secondary information systems, data, and infrastructure within Turkey. Turkey's 2016 "Law on the

Protection of Personal Data” limits transfers of personal data out of Turkey and may require firms to store data on Turkish citizens within Turkey.

Turkey’s “Law on Payments and Security Settlement Systems, Payment Services and Electronic Money Institutions” (or “E-Payment Law”) requires information systems used by financial firms for keeping documents and records to be located within Turkey. Many U.S. firms, which depend on a globally distributed network data architecture, view these requirements as unworkable given their business models. The strict implementation of the E-Payment Law by Turkey’s Banking Regulation and Supervision Agency has had a negative impact on foreign suppliers offering Internet-based payment services and has led one prominent U.S. firm to suspend its operations in Turkey.

Technology

In 2011, the Information and Communication Technologies Authority (BTK), under the Ministry of Transportation, Maritime Affairs, and Communications, imposed regulations on the use of encryption in hardware and software. Suppliers are required to provide encryption keys to state authorities before they can offer their products or services to individuals or companies within Turkey. Failure to comply can result in administrative fines and, in cases related to national security, prison sentences. The government also has blocked encrypted messaging services on several occasions in recent years.

Internet Services

Turkey’s Law No. 5651 gives BTK the responsibility to enforce bans on Internet content deemed offensive by Turkish courts. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. The Turkish government also has slowed down Internet connectivity on occasion, which hampers the ability of Internet services to reach their customers. Further, Internet services face potential liability under broad and vague standards for content posted by their users that is deemed blasphemous, discriminatory, or insulting. This potential liability makes it difficult for U.S. companies that depend on user-generated content to operate in Turkey.

Turkey’s Radio and Television Supreme Council (RTUK) published the Regulation on the Transmission of Radio, Television, and On-Demand Services on the Internet on August 1, 2019. The regulation requires providers of Internet streaming services to establish a commercial presence in Turkey and to obtain a broadcasting license. Such licensing requirements are unnecessarily burdensome for Internet streaming services and may limit the ability of foreign firms to supply such services on a cross-border basis. The regulation was published pursuant to Law No. 6112, which gives regulators the ability to prohibit certain content from being made available in Turkey and punish publishers of proscribed content.

Digital Services Tax

In December 2019, the Turkish Parliament passed and ratified a digital services tax (DST). The new measure introduces a 7.5 percent tax on revenues from targeted advertising, the digital supply of content, and digital interface services. The tax applies to services deemed to have been provided in Turkey. Companies are subject to the tax if their revenues from covered services are at least €750 million (approximately \$850 million) globally and TL20 million (approximately \$19.7 million) in Turkey. Under the law, the Turkish President has authority to increase the rate of the tax up to 15 percent or lower it to 1 percent and may set different tax rates for the different types of services covered. U.S. companies have expressed concerns that the specific services covered by the law, along with the revenue thresholds, appear to target U.S. companies.

INVESTMENT BARRIERS

For a number of years after it began implementing significant reforms to banking and other economic policies in the early 2000s, Turkey was able to attract a considerable amount of foreign investment, both direct and indirect. Turkey's generally liberal investment policies, strategic location, and relative overall stability as a strongly performing emerging market made it attractive to many foreign businesses, particularly from Europe, but also from the United States.

Over the past several years, however, as economic and democratic reforms have stalled and in some cases regressed, foreign investors have become much more cautious. Turkey has experienced historically low levels of foreign direct investment (FDI). Business executives have cited as causes the opacity of government decision-making, lack of investor confidence in the independence of the central bank, concerns of many observers about the government's commitment to the rule of law, and high levels of foreign exchange-denominated debt held by Turkish non-financial corporations.

OTHER BARRIERS

Corruption

Turkey has ratified the Organization for Economic Cooperation and Development anti-bribery convention and passed implementing legislation making it illegal to bribe foreign and domestic officials. Despite these steps, many foreign firms doing business in Turkey perceive corruption of some government officials and politicians to be a serious problem. Some observers perceive the judicial system to be susceptible to external influence from both inside and outside the government and on occasion to be biased against foreigners. Based on anecdotal evidence, government-related corruption in the construction sector appears to be worsening. Turkey ranked 81 out of 180 countries in Transparency International's 2017 Corruption Perception Index. Political turmoil over the last few years has led to upheaval within various Turkish government institutions; this in turn appears to have multiplied the opportunities for public corruption, especially in government tenders that make it more difficult for foreign firms to compete fairly.

Restrictions on Pharmaceutical Reimbursement and Official Exchange Rate for Government Purchases

U.S. pharmaceutical companies have expressed concerns that their business operations in Turkey are adversely impacted by the Turkish government's 2017 decision to restrict reimbursement for pharmaceutical products sold in Turkey and its refusal to adjust adequately the official exchange rate used for government purchases of imported pharmaceutical products.

In 2018, the government released two lists totaling approximately 200 pharmaceutical products for which the government would deny reimbursement unless they were manufactured in Turkey. Since government reimbursement covers the vast majority of pharmaceutical products sold in Turkey, U.S. firms assert that denying reimbursement would seriously undermine their ability to market their products in Turkey if they do not manufacture them locally. The government has also indicated it plans an additional three tranches of products to "de-list" in the near future but has not specified dates.

In 2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of Turkish Lira 1.95 = Euro (€) 1.00 for government reimbursements for pharmaceutical products. The government codified this arrangement in a 2009 law, and agreed in that law 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 (reduced to 60 percent in early 2019). The government's January 2017 pharmaceutical regulation fixes the exchange rate for reimbursement at less than half the current market value. Due to this artificially low reimbursement rate, pharmaceutical companies claim they cannot bring some next-generation drugs to the Turkish market.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was \$1.1 billion in 2019, a 6.8 percent decrease (\$77 million) over 2018. U.S. goods exports to Ukraine were \$2.4 billion, down 5.3 percent (\$131 million) from the previous year. Corresponding U.S. imports from Ukraine were \$1.3 billion, down 4.0 percent. Ukraine was the United States' 59th largest goods export market in 2019.

U.S. foreign direct investment (FDI) in Ukraine (stock) was \$402 million in 2018, a 1.0 percent increase from 2017.

TRADE AGREEMENTS

The United States–Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. The TICA established the United States–Ukraine Trade and Investment Council (TIC) as a forum for discussion of bilateral trade and investment relations – to address a wide range of trade and investment issues, both broad policy issues as well as specific market access barriers. The TIC seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The TIC met most recently in Kyiv on November 1, 2019. In this meeting, the delegations explored ways to eliminate trade and investment barriers in order to expand economic opportunities and achievements in both countries. Topics discussed at the TIC included specific market access barriers, the transparency and predictability of Ukraine's regulatory regime, efforts to advance the protection and enforcement of intellectual property rights, and ways to improve the business environment in Ukraine and ensure fair and equitable treatment for every company operating in Ukraine.

IMPORT POLICIES

Tariffs

Ukraine's average Most Favored Nation (MFN) applied tariff rate was 4.5 percent in 2018 (latest data available). Ukraine's average MFN applied tariff rate was 9.2 percent for agricultural products and 3.7 percent for non-agricultural products in 2018 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 5.8 percent.

Taxes

Value Added Tax

The standard value-added tax (VAT) rate in Ukraine is 20 percent. Although Ukraine has significantly improved its VAT refund system, several U.S. companies exporting from Ukraine continue to complain that payments are not always timely, and the government still owes refund arrears from years prior to 2017. As of December 31, 2019, the government of Ukraine disbursed approximately 151.9 billion hryvnia (approximately \$6.1 billion) through its automated VAT system; nevertheless, millions of dollars in outstanding refunds remain from previous years.

U.S. exporters from Ukraine have also raised concern about Ukraine’s practice of “collective responsibility” under which downstream users are held accountable for VAT payments of upstream suppliers. This approach tends to put the burden for paying VAT more heavily on U.S.-owned companies in Ukraine, which tend to invest in processed goods that are further “downstream” in the product value chain. The United States continues to urge the government of Ukraine to repay outstanding VAT arrears and to administer the program in a non-discriminatory manner.

In August 2018, Ukraine adopted a law permitting VAT refunds for specific crops, including soya and rapeseed, but only to exporters that grow the crops. This law discriminates against international trading companies, including U.S. trading companies in Ukraine, which do not grow crops in Ukraine, and for which agricultural land ownership rights in Ukraine are curtailed. The United States has pressed the Ukrainian government to rescind this law and to treat all exporters equally. In response to U.S. concerns, the Ukrainian parliament is considering legislation to remove the discriminatory VAT exemption.

Local Content Requirements

In 2015, Ukraine eliminated the local content requirement associated with its renewable energy feed-in tariffs, but replaced it with a bonus payment conditioned on the use of local materials in the construction of renewable energy projects. A renewable auction law replaced the feed-in tariff regime in 2019, and it does not include a local content requirement.

Nontariff Barriers

Customs Barriers and Trade Facilitation

While Ukraine’s MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that the State Fiscal Service assigns higher and seemingly inconsistent customs values to imports, including food, agricultural products, and pharmaceuticals, than are provided in the transaction price as provided in the import documentation, despite the WTO emphasis and domestic legal requirement generally to base the customs value on the transaction price.

Since May 2012, Ukraine has collected duties on royalties paid on imported theatrical and home entertainment products. U.S. stakeholders have claimed that the procedures for assessing the value of the royalties are burdensome and costly. Moreover, U.S. stakeholders assert that, although the Ukrainian Supreme Court has ruled that Ukrainian customs authorities had inappropriately included royalty payments in the customs value of films and DVDs, Ukrainian Customs continues to collect duties on royalties.

In October 2018, Ukraine began implementing a law to simplify and streamline the procedures for customs clearance of goods by eliminating a number of control measures and paper documents. The government bodies that issue permits for customs clearance are now obliged to submit them electronically to the state information system “Single Window of International Trade.” The law also abolished radiological monitoring, which, according to U.S. stakeholders, had been a costly and burdensome process. Further, only customs officers and border guards will remain at border crossing points. However, Ukraine’s decision in December 2018 to liquidate the State Fiscal Service and to create separate tax and customs services delayed the full implementation of the single window system. The single window system is set to operate in three stages but only the first stage was operational as of 2019. The second and third stages are needed to attain full functionality of the single window. The U.S. Government is working with the government of Ukraine on the development and roll-out of the second and third phases through its Transparency and Accountability in Public Administration and Services program. In October 2019, the government of Ukraine adopted legislation introducing the status of “Authorized Economic Operators” (AEO), as prescribed in the European Union (EU)-Ukraine Association Agreement. The new law will allow mutual

recognition of AEO status between Ukraine and the EU to facilitate customs clearance and boost bilateral cross-border trade; it remains to be seen what impact the AEO status will have on U.S. exporters.

Other Market Access Barriers

Importers of U.S. products had complained for many years about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of “uniform allotment” (*i.e.*, batches identified for sampling) in a 2002 Cabinet of Ministers Decree. Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees therefore posed a significant burden on the importer. In 2018, Ukraine adopted new legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Secondary regulation governs the frequency of checks and applies risk-based international standards, but how this legislation will be implemented remains to be seen. U.S. industry and the United States have asked that Ukraine ensure these regulations are consistent with Ukraine’s WTO obligations.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity with EU Technical Regulations and Regimes

As part of its Deep and Comprehensive Free Trade Area (DCFTA) with the EU, Ukraine is moving to approximate EU technical regulations and the EU’s regulatory regime (including the EU’s conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt existing EU measures that raise technical barriers to trade (TBT) concerns. Additionally, U.S. trade could be impacted negatively if Ukraine adopts EU regional standards as a basis for its technical regulations instead of international standards. The United States has continued to press Ukraine to ensure that as it approximates its legislation to that of the EU it does so consistent with its WTO obligations and in a manner that does not unnecessarily burden U.S. exports. Further, the U.S. Government has urged Ukraine to make full use of the WTO notification procedure to ensure new regulations and conformity assessment practices are transparent and comply with Ukraine’s international obligations. Separately, Ukraine has launched a pilot program to create an electronic platform to publicize draft regulatory measures, accept public comments, and provide its responses to those comments.

Agricultural Equipment

U.S. agricultural equipment manufacturers have expressed concern about burdensome testing requirements put in place in late 2017. Ukraine requires that type-approval certificates be issued by a conformity assessment body in Ukraine, that the certificates be renewed every five years, and that the equipment be inspected every two years. U.S. industry has also expressed concern about the lack of transparency in the process and has been actively urging the acceptance of international certificates without further assessment in Ukraine. In December 2019, Ukraine notified to the WTO a draft regulation revising the existing requirements. While the notification is welcomed, the draft does not appear to address all the concerns expressed. The United States continues to press Ukraine to address these concerns.

Product Labelling

U.S. exporters of non-food consumer items (such as personal care products) have expressed concern about the labeling provisions in draft amendments to the Law on Consumer Rights Protection that are not based on customary international practice. U.S. industry is concerned that the draft language creates confusion

with labeling requirements contained in the more specific technical regulations. The United States continues to engage with the Ukrainian government to seek clarification.

Sanitary and Phytosanitary Barriers

Approved Exporters List

Although Ukraine accepts shipments of U.S.-produced beef and pork pursuant to bilateral United States-Ukraine veterinary certificates, it allows U.S. poultry imports from only those facilities already approved to ship to the EU or that have shipped to Ukraine within the last five years. As a result of U.S. Government engagement, Ukraine now accepts products from 31 poultry facilities that have exported to Ukraine in the past. However, as of 2019 Ukraine had not yet established the technical criteria for the inclusion of new facilities or facilities that have not exported poultry to Ukraine in the last five years into its List of Approved Exporters. As a result, some U.S. poultry producers cannot ship to Ukraine until each facility completes the costly and time-consuming EU approval process or is inspected by Ukrainian Veterinary Service specialists, or until the United States undergoes a country-wide food safety systems audit. Ukraine has not established procedures for individual inspections audits. The United States is working with the government of Ukraine to resolve this issue.

Food Safety Standards

Ukrainian law recognizes three categories of food safety regulations: domestic, international, and EU standards. Ukraine relies first on domestic standards but, if none exist, its regulators will use international standards. In the absence of both a specific Ukrainian and international regulation, EU standards are used. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU standards as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. The U.S. Government has encouraged Ukraine to make full use of the WTO Sanitary and Phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

Import Certification

Imports into Ukraine of non-processed products of animal origin (including live animals) are governed by Order 533, adopted on November 24, 2019. 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 requirements that do not appear to be science-based, U.S. exports of such products may be shut out of the market. During the ninth TIC meeting, Ukraine informed the United States that there would be a one-year grace period on the implementation of the new rules outlined in Order 533. Ukraine assured the United States that U.S. agricultural exports would not be negatively impacted during this timeframe. The United States continues to work with Ukraine to ensure market access for U.S. agricultural exports as Ukraine continues to implement its Order 533.

Agricultural Biotechnology

U.S. industry has raised concerns about many aspects of Ukraine's biotechnology regime. For example, the regulatory system in Ukraine for genetically engineered (GE) products is still not fully developed. While Ukraine adopted biosafety legislation outlining basic principles for governing GE products, it had not yet implemented a regulatory regime for registration of GE products for cultivation or for trade of food and feed as of 2019. Further, cultivation of GE products, by law, is limited to only registered agricultural biotechnology products. Because Ukraine has not yet implemented a system for the registration of GE

plant varieties or animal breeds, U.S. industry has never been able to register a product. Consequently, there are no GE crops in “approved” commercial production.

In 2019, the Ukrainian government indicated its intent to develop draft legislation that would introduce a registration system mirroring the EU’s strict controls on GE crops, which could be used to prevent the production of GE crops on Ukrainian territory. At the same time, the government announced its intention to begin consultations with interested parties after January 1, 2020 in order to understand their support for more liberal legislation. The United States will work with the government of Ukraine to continue development of holistic GE legislation and ensure advanced notification of upcoming draft GE legislation amendments to the WTO.

In addition, only one GE veterinary drug (for rabies) has been approved for importation. In 2018, Ukraine adopted guidelines that in theory would allow for the approval of new GE feed, feed additives, and veterinary medicines for importation. As of January 2020, there have been no actual registrations of such products.

In 2014, Ukraine discontinued the “GMO-free” compulsory labeling for products that do not contain GE traits. In practice, however, the new approach has resulted in preferential treatment for domestic products because in order to use a “GMO-free” label, imports must undergo testing to confirm the absence of GE material. Domestic products by contrast may use a “GMO-free” label without proving the absence of GE material.

Ukraine’s commitments on biotechnology under its DCFTA with the EU are of concern. Ukraine’s harmonization of its biotechnology policy to conform with the EU’s could result in additional barriers to market access for U.S. exports of biotechnology products. *(For further information regarding the EU’s agricultural biotechnology policies, see the NTE European Union Chapter, Sanitary and Phytosanitary Barriers section.)* The U.S. Government continues to engage with Ukrainian authorities with regard to its biotechnology regulatory system.

GOVERNMENT PROCUREMENT

Government procurement of goods and services has long been associated with alleged corruption in Ukraine, creating an effective barrier to increased trade and investment in the sector. Since the introduction in 2016 of a new public electronic procurement system called ProZorro to replace the previous paper tendering process, transparency has improved and corruption reportedly has been reduced in the procurement process. In addition, since the establishment of the Central Procurement Organization in 2016, the public procurement of medicines has improved.

Ukraine is a Party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Ukraine remained on the Priority Watch List in the 2019 Special 301 Report. This designation reflects the continuing need to address the inadequate protection and enforcement of intellectual property (IP) rights and remedy the related market access barriers to U.S. exports and investment.

Ukraine has taken several positive steps to improve the protection and enforcement of IP rights. For example, in 2017, it enacted a law, On State Support of Cinematography, to address prominent online marketplaces facilitating piracy and counterfeiting that continue to be hosted in, or operated from, Ukraine. The 2017 law, despite limitations, was a sign of progress in the fight against online piracy in Ukraine. In addition, Ukraine has engaged in enforcement actions in the last two years aimed at combatting online

piracy. In 2019, the Cyber Police launched targeted campaigns against illicit pirate websites and supported criminal prosecutions against copyright infringers. However, concerns remain that online markets that facilitate significant copyright piracy and trademark counterfeiting continue to operate in Ukraine. Also, sales of counterfeit products remain problematic in physical markets, particularly the Seventh-Kilometer Market, and enforcement activity has been lacking in these markets.

In April 2018, the United States suspended a portion of Ukraine's GSP benefits due to concerns that Ukraine was not providing adequate and effective protection of IP rights and, in particular, the unfair and nontransparent administration of collective management organizations (CMOs). Ukraine subsequently adopted a law in July 2018 to reform its CMO system, and one-third of the suspended GSP benefits was reinstated in October 2019. While the law is an improvement, there are still some deficiencies in the CMO system. The U.S. Government will continue to work with Ukraine to establish a transparent, fair, and predictable system for the collective management of royalties, including through further legislative work.

Draft patent legislation in Ukraine routinely contains troubling provisions on compulsory licensing and restrictive patentability criteria. Concerns with the widespread use of unlicensed software by the Ukrainian government remain. The Cabinet of Ministers adopted a resolution in 2018 requiring government agencies to stop using unlicensed software by the end of 2019, but little progress has been made thus far in implementation. The U.S. Government continues to press Ukraine to improve all aspects of its protection and enforcement of IP rights.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints to be produced in Ukraine. According to U.S. industry, this requirement is a significant impediment for distributors of foreign films. With respect to cable television, U.S. stakeholders have asserted that a lack of transparency and oversight has allowed cable operators to underreport the number of their subscribers, which allows the operators to underpay for the channels they carry. In addition, U.S. stakeholders have raised concerns about a recent law that prohibits dubbing of foreign-language films, limits screening of foreign-language films to 15 percent of all screenings per month per movie theatre, and applies a 20 percent VAT to the screenings of foreign-language films with subtitles. The United States is working with Ukraine on these issues.

INVESTMENT BARRIERS

Privatization

The State Property Fund oversees the technical aspects of the privatization process in Ukraine, while the Cabinet of Ministers handles the strategic aspects of this process. In March 2018, Ukraine passed a new privatization law that was widely welcomed as a substantial improvement over previous legislation. The 2018 law ensures that in nearly all cases, the government will hire reputable international advisory firms to run the privatization process in a transparent manner. It also affords prospective investors the right to resort to English law in any dispute arising from their purchase of a state-owned enterprise. Ukraine's new government has vowed to implement a series of major privatization reforms, including a dramatic reduction of the number of state-owned enterprises deemed strategic and exempt from sale. As a first step, the Ukrainian Parliament voted in October 2019 to nullify legislation from 1999 banning the privatization of a lengthy list of state assets. As part of this legislation, the government must develop a new list of companies and strategic infrastructure that are barred from privatization. The United States has provided significant technical assistance to Ukraine to support an open and transparent privatization process.

OTHER BARRIERS

Corruption

Businesses in Ukraine have long suffered from abusive investigative activities by Ukrainian law enforcement personnel and have had difficulty turning to Ukraine's court system for protection from corruption and abuse. In December 2017, Ukraine's President signed the "Business Pressure Relief Law," which requires video recording of searches and the presence of the company's attorney and prohibits the unwarranted seizure of servers and computers.

In February 2018, Ukraine established the Business Pressure Relief Commission to oversee the implementation of the Business Pressure Relief Law, review violations, and provide recommendations for complaint resolutions. The Commission revealed that some businesses were still subject to abusive searches despite fewer overall searches. As a result, Ukraine amended the Business Pressure Relief Law on October 31, 2018, to introduce personal and financial liability for the unlawful behavior of investigating officers. In October 2019, the Ukrainian government established a Commission on Business Protection to replace the Business Pressure Relief Commission. The new commission is intended to protect businesses from any abuse of pressure imposed by government authorities, and is chaired by Prime Minister Honcharuk. The United States will continue to press the Ukrainian government to implement the Business Pressure Relief Law properly and transparently to help improve the protection of the rights of businesses and reduce the number of abusive practices by law enforcement bodies. In a further effort to address concerns about corruption in Ukraine, the High Anti-Corruption Court of Ukraine was created in June 2018. It issued its first sentence in October 2019 and has issued over 2,400 decisions as of December 2019.

Export Policies

A variety of products remain subject to licensing by Ministry of Economic Development, Trade, and Agriculture prior to export. Products that require such a license include: precious metals (silver and gold) and their scrap; ozone-depleting substances; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, detergents, shaving aerosols, and deodorants; lubricants; waxes; shoe polishes; insecticides; solvents; silicone; fire extinguishers and the chemicals that fill extinguishers; refrigerators and freezers; air conditioners; humidifiers; aerosols used for self-defense; fungicides; and other selected industrial chemical products. Since May 2017, the Ukrainian government has also required an export license for anthracite coal exports because Ukrainian thermal power plants consume primarily this coal grade and the majority of domestic coal production remained in Russia-controlled territories in Ukraine.

The Ukrainian government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, and some oilseeds (in particular sunflower seed, flaxseed, and linseed). In September 2016, Ukraine increased for one year the export duty on ferrous scrap metal from 10 euros (approximately \$13) to 30 euros (approximately \$38) per ton, which was extended for another year in July 2017. On June 21, 2018, the Ukrainian government increased the export duty on ferrous scrap metal again from 30 euros (approximately \$33) to 42 euros (approximately \$48) per ton and extended it to September 15, 2019. On April 5, 2019, Ukraine increased the export duty on ferrous scrap metal again from 42 euros (approximately \$48) to 58 euros (approximately \$64) and extended this provision until September 15, 2021.

Ukraine introduced a ban on the export of raw timber in 2015. On September 7, 2018, Ukraine passed legislation criminalizing the smuggling of timber and restricting domestic consumption of non-processed wood by 25 million cubic meters per year.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was \$15.7 billion in 2019, a 8.1 percent increase (\$1.2 billion) over 2018. U.S. goods exports to United Arab Emirates were \$20.0 billion, up 2.7 percent (\$527 million) from the previous year. Corresponding U.S. imports from United Arab Emirates were \$4.4 billion, down 13.0 percent. United Arab Emirates was the United States' 18th largest goods export market in 2019.

Sales of services in United Arab Emirates by majority U.S.-owned affiliates were \$9.4 billion in 2017 (latest data available), while sales of services in the United States by majority United Arab Emirates-owned firms were \$2.8 billion.

U.S. foreign direct investment (FDI) in United Arab Emirates (stock) was \$17.3 billion in 2018, a 3.1 percent increase from 2017. U.S. direct investment in United Arab Emirates is led by mining, wholesale trade, and manufacturing.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), the United Arab Emirates (UAE) applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with a number of country-specific exceptions. The UAE exempts 811 items from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods. In January 2019, the UAE increased its applied Most Favored Nation (MFN) tariffs on iron and rebar from five percent to ten percent in a step to protect domestic products. The UAE has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 14.6 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on sweetened carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). U.S. beverage producers have reported 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 within GCC countries—remain exempt from the tax. Effective December 1, 2019, the list of products subject to the excise tax in the UAE was expanded to include sweetened beverages, sugary drinks, and electronic smoking devices.

As of August 1, 2019, the UAE requires manufacturers to place two types of digital stamps on tobacco products, including cigarettes, in order to electronically track such products from the manufacturing facility to the end-consumer. A red stamp applies to products sold at all local markets, as well as at duty-free shops in arrival lounges. A green stamp applies to tobacco products sold at duty-free shops in departure lounges. As of December 1, 2019, the UAE imposes a minimum tax of \$0.11 per cigarette and \$0.03 per gram of tobacco.

GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent; implementation of the VAT varies by Member State. The UAE began applying the VAT in January 2018. Exports are eligible for tax reimbursements on purchases (“zero-rated”), while imports are subject to a “reverse-charge VAT” at their corresponding rate. This accounting mechanism mandates that importers collect output taxes on behalf of foreign companies while deducting the same amount from their tax returns. Goods and services in the following industries are also “zero-rated”: education, healthcare, initial residential sales, international passenger transport, and life insurance. In addition, the sale of airplanes, ships, trains, and services provided by companies that contract or participate in international events in the UAE are “zero-rated.” The following are tax-exempt: local passenger transport, residential leases, bank interest income, and residential real estate revenue after initial sale. VAT is collected on imports transiting the UAE and destined for other GCC countries that have begun implementing the VAT; the tax revenue is then transferred to the respective national tax authority.

In 2018, the UAE introduced additional tax regulations. In May 2018, the government issued Resolution 23 that stipulates that the Ministry of Justice is responsible for supervising committees formed to resolve tax disputes; Resolution 25 clarified the application of VAT to gold, silver, and diamonds; and Resolution 26 “zero-rated” the services provided at exhibitions and conferences. In November 2018, the UAE implemented a VAT refund for non-residents for purchases over \$68.

Beginning in June 2018, Abu Dhabi imposed an additional 30 percent fee on retail sales of alcoholic beverages in the emirate.

Nontariff Barriers

Import Bans and Restrictions

The UAE imposes import controls on a number of products, including alcoholic beverages and products, industrial alcohol-denatured, methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, printed matter such as magazines and videos, photographic material, fireworks, firearms and ammunition, explosives, drugs, and agricultural pesticides. In March 2019, the UAE Ministry of Climate Change and Environment (MCCE) issued decree No. 98 banning the import of all waste treatment derived fuel.

Import Licensing

Only UAE-registered companies, which are required to have at least 51 percent UAE ownership, are able to obtain licenses to engage in importation. This licensing requirement does not apply to goods imported into free zones. Importation of some goods for personal consumption does not require an import license.

Documentation Requirements

The UAE requires that documentation for all non-agricultural imported products be authenticated by the UAE embassy in the United States, including the delivery order from the shipping or line agent, original supplier commercial invoice, certificate of origin, and packing list. This consularization requirement is burdensome and costly to U.S. exporters.

Customs Barriers and Trade Facilitation

The UAE ratified the WTO Trade Facilitation Agreement (TFA) in April 2016. The UAE is overdue in submitting three transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) the use of customs brokers (Article 10.6.2); and (3) customs contact points for the exchange of

information (12.2.2). These notifications were due to the WTO on February 22, 2017 according to the UAE's self-designated implementation schedule.

The UAE notified its customs valuation legislation to the WTO in July 2004, but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

UAE Conformity Assessment and Marking for Agricultural Products

In 2004, the Emirates Authority for Standardization and Metrology (ESMA) introduced a mandatory regulatory program, the Emirates Conformity Assessment Scheme (ECAS) to monitor industry compliance with UAE standards for goods (both imported and domestic) to be sold in the country. Initially, ECAS only applied to items such as textiles and building materials. However, in June 2018, without notification, the UAE expanded the scope of ECAS to include agricultural products, such as energy drinks, dairy, juice, honey, and organic products. The application of ECAS to these items creates a significant trade barrier for U.S. exporters and producers and duplicates the regulatory system already overseen by MCCE.

Halal Regulations

In 2017, the MCCE transitioned supervision of halal certification to ESMA. U.S. food producers have expressed concern regarding ESMA's lack of transparency in this registration process and inconsistent application of the UAE 993 halal standard across all trading partners. In June 2019, the UAE notified the WTO of updates to the halal regulation without a proposed date of implementation. The United States submitted official comments on the notice, highlighting challenges to commercial slaughter practices, additional costs, and undue burden that may negatively affect the U.S. ability to export halal products to the UAE. The U.S. industry remains concerned that the final UAE halal measure, once implemented, will still contain several requirements that will be extremely challenging to meet in commercial U.S. animal production practices.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, the six Member States of the GCC, working through the Gulf Standards Organization (GSO), notified WTO Members of a draft regional regulation for energy drinks. The U.S. Government and U.S. private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, as well as potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified

the WTO of a revision of the draft regulation, which failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

Foot-and-Mouth Disease Vaccine

In February 2019, the MCCE issued a decree on the circulation of the Foot-and-Mouth Disease Vaccine in the UAE mandating that the vaccine be accompanied by a certificate from the country of origin validating its safety and efficacy, and has obtained approval by the relevant international organizations and laboratories.

Sanitary and Phytosanitary Barriers

Live Cattle

The UAE has banned imports of U.S. live cattle since 2004. The UAE also does not recognize that the World Health Organization for Animal Health (OIE) upgraded the U.S. status for BSE to negligible risk in 2013, and permit U.S. beef and beef products from all cattle regardless of age. The United States continues to request the UAE remove this restriction and allow for the importation of U.S. live cattle regardless of age.

Food Additives

The UAE policy to reference only Codex Alimentarius Commission (Codex) and European food additive standards within their national legislation (UAE 192: 2016) restricts the range of U.S. products permitted for export to the UAE market. Due to limitations of Codex recognized food additive uses and incongruences in U.S. and EU food standards, U.S. producers and exports to the UAE are confined to a strict number of permissible food additives that are otherwise widely available, utilized, and considered safe within the United States. Until Codex formally adopts the extensive backlog of food additive dossiers, the United States has requested the UAE to recognize the food additive standards established in the United States as well as those of the European Union.

GOVERNMENT PROCUREMENT

U.S. companies continue to raise concerns regarding the general lack of transparency in the UAE's government procurement processes as well as lengthy delays and burdensome procedures to receive payment. In response to the delays in payment, in June 2019, the Abu Dhabi government announced a rule requiring all public sector and state-owned entities to pay suppliers and contractors within 30 days from the date of receiving their invoices.

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. In addition, SMEs receive a 5 percent preference for procurement by companies in which the UAE federal government owns at least 25 percent. 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 registration fee exemption and 10 percent set-aside, discounted rent of 5 percent for entities in commercial centers, and a 5 percent price preference. In 2018, the Dubai government announced that 20 percent of government procurement would be sourced from SMEs. In 2019, the UAE issued Decision Number 4 providing a 10 percent preference for SMEs owned by UAE citizens and exempting registration fees if the companies are valued at less than

\$2.7 million. Decision 4 also provides a 10 percent preference to environmentally friendly or “green” companies and to “green” commodities and services produced in the UAE.

Foreign defense contractors continue to raise concerns regarding the complexity of the UAE’s “Tawazun Economic Program.” This program requires those with contracts valued at 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 as a result of the complexity, sophistication, or infrastructure requirements. Monetary obligations are assessed on the expected growth cycle of a project at the end of each year of the program. Foreign defense firms must submit a bank guarantee equivalent to 8.5 percent of overall outstanding obligations.

In 2017, the Abu Dhabi National Oil Company (ADNOC) implemented an In-Country Value (ICV) Program, requiring that suppliers provide an ICV certificate demonstrating their plans for local content and hiring as part of their bids. ADNOC considers the ICV score in awarding contracts. U.S. industry has raised concerns that the ICV program is opaque and that the ICV criteria change frequently.

The UAE is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The UAE remained on the Watch List in the annual Special 301 Report in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. In 2017, the UAE Ministry of Health and Ministry of Economy granted marketing approvals to domestic companies to produce generic versions of pharmaceutical products still under patent protection in the United States, claiming that previous government measures providing patent protection for such products were no longer valid. The UAE government has failed to provide clarifications or assurances since those approvals, and this lack of predictability and transparency has led to instability and confusion among stakeholders in the innovative pharmaceutical industry.

In addition, significant copyright piracy and trademark infringement concerns remain. Officials in the Emirate of Sharjah continue to allow the re-export and transshipment of counterfeit products, rather than seizing and destroying the goods, even though federal UAE officials have asserted that the 2014 law on commercial fraud requires such destruction. U.S. right holders also continue to raise concerns over significant trademark infringement in physical markets and free trade zones; the lack of IP prosecutions; a lack of government staff solely dedicated to counterfeit enforcement; a lack of enforcement action without specific, written complaints from right holders; and a lack of transparency and available information related to UAE raids and seizures of pirated and counterfeit goods.

As of 2019, the UAE has yet to provide a mechanism to facilitate the collection of copyright licensing and royalty payments, which has been a longstanding concern.

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

SERVICES BARRIERS

Distributor Services

Federal Law No. 14 of 1988 governs registered commercial agents, and Federal Laws No. 18 of 1993 and No. 5 of 1985 govern unregistered commercial agencies. These laws require non-GCC foreign companies to distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals or GCC citizens. The UAE government allows foreign companies to sell some products (including livestock, dairy products, fats and oils, honey, eggs, fruit juices, salt, yeast, animal feed, detergents, and hygiene products) without a local agent, in order to stabilize the prices of these products. Foreign companies are required to maintain an exclusive commercial agent and may not register another commercial agent unless either the previous agent or the Commercial Agencies Committee agrees to termination of the agreement or unless there is judicial action to cancel the agreement.

In January 2019, the UAE adopted an amendment to the provisions of the Commercial Agencies Law allowing domestic commercial agencies to become public shareholding companies on local stock markets, and allowing public shareholding companies that are not wholly-owned by UAE nationals or GCC nationals to also own commercial agencies.

Insurance Services

Foreign insurance companies are allowed to operate in the UAE only as branches. Cabinet Resolution No. 16 of May 2017 allows for an increase from 25 percent to 49 percent foreign equity in domestic insurance companies.

In 2018, the UAE issued Federal Law No. 3, which amends Federal Law No. 6 of 2007 that established the Insurance Authority (IA), a federal insurance regulatory body. The law stipulates that insurance companies operating in the UAE may not combine insurance business of “persons and funds accumulation” and “property and liability.” Decision No. 14 of 2018 established financial solvency requirements for the branches of foreign insurance companies in the UAE that provide a type of Islamic insurance (Takaful). Decision No. 14 stipulates that all branches of foreign insurance companies must disclose the value of the net assets of their parent companies to determine risk exposure and must provide the IA with copies of their solvency margin calculations on an annual basis. Further, a foreign company branch in the UAE must report to the IA any deficiency in the financial solvency of its parent company and the extent to which the financial situation of the parent company has affected the financial solvency of the branch in the UAE. Federal Law No. 3 also stipulates that all branches of foreign insurance companies operating in the UAE must maintain sufficient admissible assets to fulfil their liabilities in the UAE at all times.

In May 2019, the IA issued a resolution on regulations for reinsurance businesses, including licensing and registration of reinsurance companies established in the UAE and branches of foreign reinsurance companies. The regulation requires that at least 51 percent of the capital of a reinsurance company incorporated in the UAE be owned by natural persons who are UAE or GCC nationals or by legal persons fully owned by UAE or GCC nationals. According to the regulations, a foreign reinsurance company cannot operate in the UAE through an agency but it may seek a license from the IA for a branch. In addition, a foreign reinsurance company that opens a branch in the UAE is required to maintain a certain minimum classifications by international rating companies (Standard & Poor’s BBB; Moody’s Baa; AM Best B+; and Fitch Ratings BBB, or equivalent rating by other international rating organizations recognized by the IA).

The Emirate of Abu Dhabi limits insurance coverage for subsidiaries of ADNOC, infrastructure, and construction projects to Abu Dhabi-based insurance companies.

Telecommunications Services

The UAE government maintains majority ownership in Etisalat and du – the only telecommunications service suppliers, Internet service providers, and mobile phone operators in the UAE. Since June 2015, the UAE has allowed foreign investors to own up to 20 percent of the largest telecommunications operator, Etisalat, though actual foreign ownership is only 4.9 percent. For du, though foreign equity is allowed up to 100 percent, foreign ownership accounts for less than one percent.

BARRIERS TO DIGITAL TRADE

Etisalat and du block access to most “over-the-top” (OTT) Internet-based communications services, such as Voice over Internet Protocol (VoIP) services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services.

The UAE maintains measures that discriminate against app-based transportation services, including an outright ban on such services in certain emirates. Where they are not banned, these services are subject to requirements that they charge as much as 30 percent more than taxis, and that drivers must be licensed under onerous for-hire vehicle regulations. In Dubai, any for-hire transportation company must own at least 20 vehicles, 90 percent of which must have a value greater than \$50,000, effectively undermining the business model of certain app-based transportation services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

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.

The UAE restricts foreign ownership of land and limits foreign investment through restrictive agency, sponsorship, and distribution requirements. With rare exceptions, or unless established in free zones, companies in the UAE with non-GCC ownership are required to have a minimum of 51 percent UAE national ownership, although profits and management control can be apportioned differently and often are negotiated at fixed amounts. Branch offices of non-GCC foreign companies are required to have a commercial agent with 100 percent UAE national ownership, unless the foreign company has established its office pursuant to an agreement with the federal or an emirate-level government. Pursuant to Federal Law No. 19 of 2018 on Foreign Direct Investment, in July 2019, the UAE government allowed 100 percent foreign ownership outside free zones for 122 economic activities, including 19 in the agricultural sector, 51 in the industrial sector, and 52 in the services sector. The government also outlined a range of economic activities where foreign ownership is prohibited, including, *inter alia*, oil exploration and production, security, banking and financial activities, insurance, water and electricity provision, telecommunication and other audio visual services, road and air transport, commercial agency, and medical retail.

In 2019, the Abu Dhabi Government issued Law No. 13 allowing foreign individuals and companies wholly or partially owned by non-nationals to own freehold interests in land located within certain investment areas of Abu Dhabi for an unrestricted time period. The Law also allows public joint stock companies to own a

freehold interest in land and property anywhere in Abu Dhabi, provided that at least 51 percent of the company is owned by UAE nationals. Prior to this law, foreign ownership of land was limited to a long term lease of up to 99 years, renewable upon the agreement of both parties.

In April 2016, the UAE clarified Federal Law No. 4 of 2012, which defines “a dominant establishment” and prohibits these entities from engaging in price fixing, predatory pricing, discrimination between customers with similar contracts without justification, or forcing customers to refrain from dealing with competing entities. However, the resolution exempts establishments at least 50 percent owned by federal or local governments. Generally, state-owned enterprises are viewed as favored in legal disputes with foreign companies brought before the local judiciary.

Ministry of Economy Resolution No. 3 of January 2017 updated the fees charged for various services, with those applicable to foreign companies being 4 to 12 times higher than the fees on national companies. The Emirate of Ajman issued decree No. 12 of July 2017 reorganizing real estate brokerage offices, under which the Ajman Department of Economic Development may not issue a new license or renew or modify a valid license for a real estate brokerage office unless the applicant is a UAE citizen or GCC national.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was \$55.8 billion in 2019, a 41.3 percent increase (\$16.3 billion) over 2018. U.S. goods exports to Vietnam were \$10.9 billion, up 12.5 percent (\$1.2 billion) from the previous year. Corresponding U.S. imports from Vietnam were \$66.7 billion, up 35.6 percent. Vietnam was the United States' 27th largest goods export market in 2019.

U.S. exports of services to Vietnam were an estimated \$2.5 billion in 2018 (latest data available) and U.S. imports were \$1.3 billion. Sales of services in Vietnam by majority U.S.-owned affiliates were \$835 million in 2017 (latest data available), while sales of services in the United States by majority Vietnam-owned firms were \$1 million.

U.S. foreign direct investment (FDI) in Vietnam (stock) was \$2.4 billion in 2018, a 17.3 percent increase from 2017.

TRADE AGREEMENTS

Vietnam is a party to the region-wide Association of Southeast Asian Nations (ASEAN) Free Trade Area. ASEAN, and by extension Vietnam, has preferential trade agreements with Australia, China, Hong Kong, India, Japan, Korea, and New Zealand, and concluded text-based negotiations on the Regional Comprehensive Economic Partnership in November 2019. Vietnam is also party to bilateral free trade agreements (FTAs) with Chile, Japan, and Korea, as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Vietnam-Eurasian Economic Union. Vietnam is negotiating additional FTAs with the European Free Trade Association (EFTA) (Iceland, Liechtenstein, Norway, and Switzerland), China, and Israel. In addition, the European Union (EU) needs to ratify the EU-Vietnam FTA for the agreement to enter into force.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Vietnam's average Most Favored Nation (MFN) applied tariff rate was 9.5 percent in 2018 (latest data available). Vietnam's average MFN applied tariff rate was 16.5 percent for agricultural products and 8.4 percent for non-agricultural products in 2018 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with a simple average WTO bound tariff rate of 11.7 percent.

Vietnam's Law on Tariffs (No. 107), which includes an applied tariff schedule (Decree 122/2016/ND-CP), has been in effect since September 1, 2016. Inputs imported for software production, medical equipment production, shipbuilding, and petroleum activities that cannot be produced domestically are eligible for tariff exemptions. Tariff exemptions and refunds are also applied to the following: animal breeds, plant varieties, fertilizers, and plant protection products that are not produced domestically; machinery, inputs, and spare parts used for money printing; and goods imported or exported for the purpose of environmental protection.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In recent years, Vietnam has increased MFN applied tariff rates on a number of products, including 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.

Decree 125 increased the number of MFN duty-free tariff lines by 149 lines, from 3,133 to 3,282, effective January 1, 2018. The decree also doubled tariff rates for used passenger vehicles. In addition, Decree 125 reduced tariff rates to zero percent for automotive parts that cannot be produced domestically (HS subheading 98.49), applicable until 2022. This preferential tariff program for automotive parts is available only to companies that meet certain conditions set out in Decree 116 regarding automobile production and importation.

Taxes

Vietnam's Law 106 of 2016 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

Nontariff Barriers

Import Bans and Restrictions

Vietnam prohibits the commercial importation of some products, including certain children's toys, second-hand consumer goods, used parts for vehicles, used internal combustion engines of less than 30 horsepower, certain encryption devices and encryption software, and certain cultural products. Ministry of Science and Technology (MOST) Circular 23/2015/TT-BKHCN, on the importation of used machinery, equipment, and technology, rolled back some restrictions on the importation of remanufactured equipment and simplified the documentation needed to establish the year of manufacture for used equipment.

Ministry of Industry and Trade (MOIT) Circular 05/2014 set out a list of items subject to permanent and temporary bans on importation for re-export under Directive 23 of 2012, including chemicals, plastics and plastic waste, and certain types of machinery and equipment. In addition, Ministry of Construction Circular 25 prohibits the importation of asbestos of the amphibole group.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Government Decision 18 of 2016 eases import prohibitions on some used IT products, if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation, and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing, or data processing for foreign partners; or (4) re-imported after overseas repairs under warranty. The decision also covers refurbished goods and components out of production imported to replace or repair those being used domestically.

Import Licensing

The Ministry of Health (MOH) issued Circular 30 in 2015. This circular requires import licenses for 25 medical diagnostic devices and 24 medical treatment devices.

Ministry of Information and Communications (MIC) Circular 18/2014/TT-BTTTT provides that imports of mobile phones, radio transmitters, and radio transmitter-receivers require an import permit. According

to the circular, which went into effect in January 2015, an import permit will be issued within seven working days after an importer submits an application to MIC.

Government Decree No. 58/2016/ND-CP (Decree 58) requires an import license for some products with cryptographic functions (encryption). U.S. stakeholders have reported that Vietnam Customs has blocked imports of certain network equipment products containing encryption that did not previously require an import license. The import license requirement seems to have broadened to cover products where encryption is an “important” function, rather than just those meeting the “core” function standard reflected in Decree 58.

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 subjects. The new law defined “network information safety” as the protection of network information and network information systems from unauthorized access, use, disclosure, interruption, amendment or sabotage in order to ensure the confidentiality and usability of the information on the network system. Companies that produce information and communications technology products have expressed concerns about uncertainties created by ambiguities contained in this law and its implementing decrees, including Decree 108/2016/ND-CP on conditions for trading in network information security products and services and Decree 58/2016/ND-CP on trading and import-export of civil cryptographic products and services, particularly with respect to import licensing procedures for information and communications technology products with encryption capabilities.

Trading Rights

Companies are allowed to import all goods except for a limited number of products that may only be imported by state trading enterprises. These products include cigars and cigarettes, materials for gold bar production, fireworks, newspapers, journals and periodicals, and recorded media for sound or pictures (with certain exclusions). Vietnamese law provides that foreign-invested enterprises with export trading licenses may buy agricultural products only from local traders.

Price Registration and Stabilization

Under Vietnam’s Price Law, the Ministry of Finance (MOF) has the authority to apply price controls on a set list of products, including petroleum products, electricity, liquefied petroleum gas, nitrogen fertilizers, pesticides, animal vaccines, salt, milk products for children under the age of six, sugar, rice, and basic human medications.

MOIT Circular 08 of 2017 gives processors, traders, and importers of milk and some supplementary products the right to determine retail prices, but requires them to declare their retail prices to competent authorities. They also must 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 these increases if the response is deemed inadequate. In September 2018, the MOH released Circular 22/2018/TT-BYT, specifying the list of supplementary products subject to price declaration. The United States has engaged with Vietnam on this issue and continues to monitor the situation in consultation with U.S. industry.

Product Registration Requirements – Imported Pharmaceuticals

U.S. stakeholders continue to express concerns about the impact on foreign firms of product registration requirements for imported pharmaceuticals. Decree 54 of 2017 permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical community welcomed this step but continue to have concerns about warehousing, distribution, and licensing requirements, as well as the lack of a transition period for companies to establish a foreign-invested entity.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Automobiles and Automotive Parts

Since January 1, 2018, Decree 116/2017/ND-CP further tightened conditions for automotive manufacture, assembly, importation, and service, and for automobile warranties. Under the decree, importers must submit lot-by-lot emission and safety certificates issued by the Vietnam Registrar. Industry stakeholders argue that lot-by-lot emission and safety tests are extremely costly and difficult to implement. In January 2018, Vietnam issued Circular 03/2018/TT-BGTVT guiding the implementation of Decree 116 with additional requirements on Vehicle Type Approvals for automotive parts (tires, side mirrors, headlights, and windshields) used to assemble imported cars. The United States is concerned by the trade disruptions caused by the Decree and continues to work with Vietnam to find solutions for U.S. exporters. In September 2019, at the instruction of the Prime Minister, MOIT prepared revisions to Decree 116 that would allow importation without type approval of vehicles from countries that provide self-certification of safety and emissions compliance. These revisions would also eliminate lot-by-lot testing but require approval of testing procedures at production facilities. Although the revisions, if put into effect, would reduce the burden on importers, the revisions do not clarify conformity assessment procedures and requirements. The United States has engaged extensively with Vietnam on this issue including in the WTO Committee on Technical Barriers to Trade (TBT) and WTO Council on Trade in Goods and continues to monitor the situation in consultation with U.S. industry.

Since the beginning of 2018, under Decision 40/2017/QD-TTg, Vietnam requires all vehicles with fewer than nine seats to have energy labels and to conform to minimum energy efficiency standards.

Used Machinery

Government Decision 18 of 2019 imposed new conditions for the importation of used machinery and equipment into Vietnam. According to the decision, equipment for actual business use (not for trading) can be imported to Vietnam if the article is less than or equal to 10 years old and compliant with the standards of Vietnam, South Korea, or any G7 country; the remaining capacity is at least 85 percent of the initial design; its energy consumption does not exceed more than 115 percent of the equipment's original specification; the technology associated with used machinery is not listed in the List of Non-transferable Technology (Decree 76/2018/ND-CP); and is being used in at least three factories in Organization for Economic Cooperation and Development (OECD) countries.

Glyphosate

On April 10, 2019, the Ministry of Agriculture and Rural Development (MARD) announced Decision 1186 to ban glyphosate use in Vietnam, citing concerns for human safety, and pressures from the public and the legislature. Initially, a transition period allowed for domestic use through June 10, 2020, while a ban on importation of glyphosate went into effect on June 10, 2019. In October 2019, Vietnam told the

United States that it plans to postpone the ban on glyphosate until June 2021. Vietnam has yet to officially announce any change to Decision 1186.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Importation Approvals for Genetically Engineered Products

While Vietnam is a major importer of key biotechnology plant products such as corn, distiller dried grains with solubles (DDGS), soybeans, and cotton, the regulatory review and approval process for biotechnology applications has been significantly delayed since July 2016. MARD has stated that the slowdown in the approval of biotechnology applications was to allow for further consideration of biosafety reviews and public opinions on genetically engineered (GE) products.

Going into 2019, there were 29 agricultural biotechnology products awaiting approval from MARD. By February 2020, MARD had issued 16 Certificates of Food and Feed Safety Approvals, leaving 13 agricultural biotechnology products to be approved. Industry reports that all these 13 agricultural biotechnology products meet Vietnam's requirements on "five-country recognitions" for biotechnology food and feed authorizations. However, of the 13 outstanding events, MARD has only officially acknowledged receiving 9 applications as of the end of 2019. Agricultural biotechnology product submissions awaiting review and approval include corn, soybeans, canola, cotton, alfalfa, and sugar beets varieties.

In October 2019, Vietnam informed the United States that the Vietnamese Biosafety Committee will convene to complete its review of the 17 outstanding agricultural biotechnology product applications. Vietnam also committed to resume accepting applications for food and feed approvals.

Commercialization of Genetically Engineered Crops/Varieties

Vietnam has delayed the approval of new GE corn varieties for commercialization since 2017. Currently, there are eight biotechnology corn varieties pending MARD's review and/or commercialization approval. In September 2018, MARD repealed Circular 69/2009, which regulated field trials for environmental risk assessments, causing a gap in regulations on field trials and biosafety certifications required for the commercialization of GE crops in Vietnam.

The Decree guiding the Law on Crop Production took effect on February 1, 2020, allowing the import of GE seeds for field trials prior to commercialization. However, the procedures to obtain an import permit for GE seeds for environmental risk assessments were not addressed in this Decree. The Office of the Government has issued instructions for the Ministry of Natural Resources and the Environment to amend Decree 69 in 2020, in order to clarify the procedures to obtain import permits for environmental risk assessments. The United States continues to engage with Vietnam on this issue and monitor the situation in consultation with U.S. industry.

Plant Quarantine Restrictions

Vietnam requires fumigation for shipments of corn, DDGS and wheat due to the presence of quarantine and non-quarantine pests. Since fumigation treatment is not effective in cold weather, the United States supports policies that allow for fumigation on arrival to Vietnam prior to release in the market. The United States will continue to engage Vietnam to implement transparent policies that allow for fumigation on arrival.

Phytosanitary Certificates

Vietnam requires a phytosanitary certificate for processed potato products regardless of origin despite the fact that they are not ready-to-eat, already have undergone processing, and will undergo further heat treatment prior to consumption. The United States will continue to engage Vietnam to remove this unnecessary documentation requirement.

Animal Health

Vietnam's National Assembly passed the Livestock Production Law in November 2018, even though many WTO Members had expressed concerns about the draft law in the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee). Article 12 of the Livestock Production Law includes language to ban imports of livestock products produced using chemicals prohibited for domestic use. MARD officials initially asserted that because no banned substances are specifically named in the law, there would be no impact on trade. The law went into effect on January 1, 2020.

The United States worked with Vietnam to remove references to antimicrobials that could impact trade. However, a draft decree for the implementation of the Livestock Production Law, published in 2019, also included a timeline that restricts preventive use of antimicrobials in young animals. MARD is still evaluating which antimicrobials it will restrict and how it will enforce the measure.

Food Safety

On February 2, 2018, Vietnam adopted Decree 15 on the enforcement of the Food Safety Law, replacing the original Law issued in 2012, known as Decree 38. Decree 15 provides new guidance on registrations, announcements, certificates, labels, advertisements, working conditions, origins of food and food additives, and jurisdiction for food safety issues. Although the Decree simplifies many of the import procedures for food and agricultural products, uncertainty remains on many of its aspects. Different Vietnamese government ministries, and even departments within MARD, appear to contradict each other regarding the interpretation of the Decree. Despite requests by the United States and other trading partners, Vietnam has refused to notify WTO Members of the Decree. The United States will continue to monitor developments related to Decree 15.

Despite making positive changes, Decree 15 leaves unclear Vietnam's rules on whether firms exporting certain products to Vietnam are required to register with MARD. One example is "processed products". Although Decree 15 has removed Vietnam's requirement for registration of facilities producing these products, there remains uncertainty about what constitutes a processed product.

The United States remains concerned with the lack of clarity in important elements of the process employed pursuant to Decree 15 by the Department of Animal Health (DAH) for review of facilities seeking to register, and the burdensome and lengthy approval process.

Ban on Offal Products

Despite MARD lifting of Vietnam's ban on the importation of so-called "white offal," such as beef and pork stomach and intestines, and poultry gizzards in September 2013, Vietnam has not approved new U.S. facilities to export these products.

Products of Plant Origin

In January 2015, Vietnam implemented a new Plant Health Law and 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 has submitted PRA information for a range of commodities, including citrus and stone fruit. In some instances, the PRA approval process has been slow, which has delayed approvals for potential U.S. exports of products of plant origin.

In September 2018, MARD issued a notice that it would re-export imported grain found contaminated with Canada thistle (*circium arvense*) weed seed without the possibility of post-entry conditioning or processing. On March 31, 2019, MARD announced a zero-tolerance policy for soybean and wheat shipments containing Canada thistle. This policy has created uncertainty for exporters, importers, and the Vietnamese feed and flour milling industries. USDA has responded to Vietnam's Pest Risk Analysis and continues to work with MARD to resolve this issue.

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, but has been an observer to the WTO Committee on Government Procurement since 2012.

INTELLECTUAL PROPERTY PROTECTION

Vietnam remained on the Special 301 Watch List in 2019. Despite Vietnamese agencies' engagement in public awareness campaigns, the United States remains concerned about intellectual property (IP) protection and enforcement in Vietnam. Capacity, corruption, and resource constraints continue to pose challenges to effective IP enforcement. Online piracy and sales of counterfeit goods over the Internet and in physical markets continue to be a concern. Two physical markets in Vietnam, Ben Thanh Market in Ho Chi Minh City and Dong Xuan Market in Hanoi, were included in the Out-of-Cycle Review of Notorious Markets. Vietnam continues to rely heavily on administrative actions and penalties to enforce IP, but these have failed to deter counterfeiting and piracy. 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 continues to discuss these issues with Vietnam.

SERVICES BARRIERS

Audiovisual Services

Decree 06/2016 on the Management, Provision and Use of Radio and Television Services, enacted in March 2016, requires that foreign channels on pay-television services account for no more than 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-television providers

use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Vietnam 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 for advertisements to be approved for placement in a Vietnamese broadcast.

Vietnam is working on draft revisions to Decree 06/2016 designed to extend Vietnam's broadcasting regulatory regime to Internet-enabled subscription video services. Though still in draft form, the proposed revisions to the Decree have created concern among stakeholders about the onerous regulations for licensing, local presence, local content quota, pre-editing and translation, and advertising. Despite the lack of a final measure on Internet-enabled subscription video services, Vietnam's Ministry of Communications has pressured manufacturers of "smart" TVs to remove pre-installed applications facilitating user access to Internet-enabled video services, disrupting business opportunities for both hardware and service suppliers. The United States is working with Vietnam to address stakeholders' concerns.

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 conducted by the local authorities and approved by MOIT. In January 2018, MOIT issued Decree 09/2018/ND-CP, which provides additional details on the application of the economic needs test. The criteria include a market analysis, impact assessment of a new retail outlet, and contributions to socio-economic development. The only companies exempt from the economic needs test requirement are small and medium-sized retail outlets (less than 500 square meters) located in shopping malls.

Financial Services

Foreign investors may set up 100 percent foreign-owned bank subsidiaries, or may take ownership interests in domestic joint stock banks (commercial banks with any amount of private ownership) or joint venture banks (banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutions and individual investors in domestic joint stock banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined by Vietnam as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese bank) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Foreign banks have raised concerns about provisions in the Law on Credit Institutions, which limits the lending of foreign bank branches in Vietnam based on their local charter capital, rather than on the global capital of the parent bank.

Electronic Payment Services

Vietnam has sought to promote the development of a local electronic payments industry. In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* switching monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Vietnam then issued Circular 19/2016/TT-NHNN, mandating that all domestic and cross-border retail credit and debit transactions be processed through NAPAS starting in January 2018. Such a requirement prohibits foreign electronic payment services suppliers from supplying the service fully on a cross-border basis (*i.e.*, without involving NAPAS, a competing service supplier). In November 2019, the State Bank of Vietnam issued a draft revision to Circular 19 that limits the requirements to domestic card present retail electronic payment transactions and extends the deadline for implementation to January 1, 2021. In November 2019, Vietnam issued a revised draft decree on cashless payments, which seems to cover all mobile, electronic wallet, and related retail electronic payments. This draft decree also prohibits supply of services cross-border and requires commercial presence and domestic infrastructure to supply

services. The draft decree also appears to require that NAPAS switch all mobile and electronic wallet and related transactions covered by the draft decree.

Telecommunications Services

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. For instance, foreign ownership in suppliers of closed-user networks is permitted up to 70 percent, while foreign ownership in suppliers of facility-based basic services is generally capped at 49 percent. Vietnam also allows foreign equity of up to 65 percent for suppliers of non-facilities-based public telecommunications services. Facilities-based operators are required to be majority state-owned firms, limiting the pool of potential joint venture partners.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Vietnam's National Assembly passed the Law on Cybersecurity in June 2018. Article 26 of the Law requires online firms to store personal and other types of data and to establish branch or representative offices in Vietnam. The Law also establishes new restrictions related to online content. Vietnam is currently drafting implementing measures. A draft decree released in July 2019 would narrow the applicability of the Law's local data storage and local presence requirements somewhat by making those requirements applicable only if a service is used to violate Vietnamese law and the service supplier fails to comply with relevant legal requirements, such as a 24-hour takedown requirement for a wide array of proscribed online content. However, as a wide range of digital services that are routinely supplied on a cross-border basis remain potentially subject to these requirements, the draft decree remains problematic. The United States is concerned that implementation of the Law could disrupt international trade in services, and has submitted several rounds of comments to the Ministry of Public Security, which is drafting the decree. The United States will continue to engage the government of Vietnam to ensure that the Law and implementing measures do not disrupt international trade in services.

Internet Services

Online Advertising Services

Decree No. 181/2013/ND-CP significantly restricts the supply of online advertising. The decree requires Vietnamese advertisers to contract with a Vietnam-based advertising services provider in order to place advertisements on foreign websites. It also requires any foreign websites with advertising targeting Vietnam to notify the Ministry of Culture, Sports and Tourism in writing of the name and main business lines of the Vietnamese agent who has facilitated the advertising service in Vietnam at least 15 days before publishing an advertisement. Decree 28/2017/ND-CP imposes fines on companies that place advertisements on foreign websites without going through a local intermediary, which significantly affects the ability of suppliers to offer services fully on a cross-border basis. While enforcement action to date has not been evident, enforcement threats have been used to pressure online suppliers over their failure to take down content deemed objectionable. The United States continues to press Vietnam to eliminate these restrictions.

Internet-based Content Services

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies or companies with substantial state control. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree

72/2013/ND-CP on the management, provision, and use of Internet services and online information prohibits the use of Internet services to: oppose the government; harm national security, social order, and safety; or propagandize war, terrorism, hatred, violence, or superstition. The United States has raised concerns about these restrictions with Vietnam and will continue to monitor this issue closely. In March 2018, Vietnam issued Decree 27/2018/ND-CP to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

Circular 09/2014/TT-BTTTT “Detailing Management, Provision and Use of Information on Websites and Social Networks,” which guides implementation of Decree 72, requires Vietnamese companies that operate general websites and social networks, including blogging platforms, to locate a server system in Vietnam and to store posted information for 90 days and certain metadata for up to two years. To date, enforcement of the decree appears to be very limited, and MIC has not released guidance on how the decree will apply to foreign cross-border service providers.

MIC Circular 38/2016/TT-BTTTT on Cross-border provision of General Information requires offshore service providers with a large number of users in Vietnam to comply with online content restrictions. Circular 38 is one of the implementing circulars of Decree 72. Specific requirements under Circular 38 apply to offshore entities that provide public information across borders into Vietnam (including websites, social networks, online applications, search engines, and other similar forms of services) and either (a) have more than one million hits from Vietnam per month or (b) lease a data center to store digital information in Vietnam in order to provide its services. Such offshore service providers must comply with Vietnam’s content requirements by providing contact information to MIC and cooperating with authorities to take down information prohibited under Decree 72.

OTHER BARRIERS

U.S. stakeholders continue to have concerns about the lack of transparency and accountability, and other governance issues in Vietnam. The United States will continue to work with Vietnam to support reform efforts and to promote greater transparency.

Export Policies

Export Bans

Under MARD Circular 24 of 2016, Vietnam bans the export of certain wood products. These products include round timber and sawn timber made from natural wood, firewood and charcoal made from timber, and firewood made from natural wood.

Export Taxes

Vietnam imposes export taxes on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. Vietnam also maintains export tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

Vietnam’s export taxes range from 5 percent to 40 percent. 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).

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,³ USTR prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the [first annual progress report](#) in October 2007. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report⁴, barriers to the exports of GHGIRTs are generally similar to those identified in the NTE Report 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. USTR's Special 301 report, pursuant to section 182 of the Trade Act of 1974, describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners. The 2019 Special 301 Report will be released later this year.

In APEC, the United States continued its efforts to reduce barriers to trade in GHGIRTs by working to ensure that economies that had not yet implemented APEC Leaders' 2011 commitment to reduce tariffs on environmental goods to five percent or less fulfilled their commitment to cut these tariffs. As a result of USTR's efforts, Indonesia joined other APEC economies in cutting tariffs on environmental goods, including GHGIRTs, resulting in the reduction of tariffs on hundreds of tariff lines across the Asia-Pacific region, impacting billions of dollars of U.S. exports.

Global trade in environmental goods, including GHGIRTs, is estimated to be over \$1 trillion annually, and the United States exported \$249 billion of environmental goods in 2019. China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

³ Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

⁴ The Department of State's 2006 "Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment" identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

APPENDIX II

APPENDIX II

US Goods Trade for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Goods Balance		Change 2018-19	Exports* 2018	Exports* 2019	Change 2018-19		Imports** 2018	Imports** 2019	Change 2018-19	
	2018	2019				Value	Percent			Value	Percent
World	-874,814	-853,228	21,586	1,665,992	1,645,174	-20,818	-1.2	2,540,806	2,498,402	-42,404	-1.7
Canada	-19,056	-27,043	-7,987	299,769	292,693	-7,075	-2.4	318,824	319,736	911	0.3
Mexico	-80,658	-101,752	-21,094	265,443	256,374	-9,069	-3.4	346,101	358,126	12,025	3.5
China	-419,527	-345,617	73,911	120,148	106,627	-13,521	-11.3	539,676	452,243	-87,432	-16.2
Japan	-67,196	-68,984	-1,788	75,229	74,653	-576	-0.8	142,425	143,636	1,211	0.9
United Kingdom	5,530	5,969	440	66,313	69,157	2,844	4.3	60,783	63,187	2,404	4.0
Germany	-68,096	-67,166	930	57,753	60,296	2,543	4.4	125,849	127,462	1,613	1.3
Korea	-17,757	-20,614	-2,856	56,507	56,897	391	0.7	74,264	77,511	3,247	4.4
Netherlands	24,199	21,466	-2,733	48,703	51,233	2,530	5.2	24,504	29,766	5,262	21.5
Brazil	8,456	12,230	3,775	39,560	43,083	3,523	8.9	31,104	30,853	-251	-0.8
Hong Kong	31,024	26,087	-4,937	37,310	30,800	-6,510	-17.4	6,286	4,713	-1,573	-25.0
France	-15,815	-19,679	-3,864	36,617	37,771	1,154	3.2	52,432	57,449	5,018	9.6
Singapore	6,135	5,169	-967	32,747	31,550	-1,198	-3.7	26,612	26,381	-231	-0.9
India	-20,846	-23,256	-2,409	33,503	34,410	907	2.7	54,349	57,665	3,316	6.1
Belgium	14,245	14,597	352	31,427	34,769	3,342	10.6	17,182	20,172	2,990	17.4
Taiwan	-15,196	-23,037	-7,842	30,560	31,219	658	2.2	45,756	54,256	8,500	18.6
Australia	15,186	15,171	-16	25,310	26,025	715	2.8	10,124	10,854	731	7.2
Italy	-31,946	-33,370	-1,424	22,798	23,790	992	4.4	54,744	57,160	2,416	4.4
Switzerland	-18,920	-26,663	-7,742	22,172	17,917	-4,255	-19.2	41,092	44,580	3,488	8.5
UAE	14,510	15,686	1,176	19,511	20,038	527	2.7	5,002	4,353	-649	-13.0
Chile	3,989	5,382	1,393	15,377	15,776	400	2.6	11,387	10,394	-994	-8.7
Colombia	1,375	642	-733	15,158	14,780	-378	-2.5	13,783	14,138	354	2.6
Israel	-8,064	-5,130	2,934	13,707	14,377	670	4.9	21,771	19,507	-2,264	-10.4
Saudi Arabia	-10,461	846	11,307	13,601	14,289	688	5.1	24,062	13,443	-10,619	-44.1
Spain	-4,124	-1,693	2,431	13,086	15,101	2,015	15.4	17,210	16,795	-415	-2.4
Malaysia	-26,344	-27,447	-1,103	13,012	13,120	108	0.8	39,356	40,567	1,211	3.1
Thailand	-19,424	-20,153	-729	12,448	13,308	860	6.9	31,873	33,461	1,588	5.0
Ireland	-46,729	-52,736	-6,007	10,725	9,032	-1,694	-15.8	57,454	61,768	4,314	7.5
Turkey	-73	-599	-526	10,261	10,045	-217	-2.1	10,334	10,644	309	3.0
Argentina	5,094	3,162	-1,933	9,927	8,079	-1,848	-18.6	4,833	4,917	84	1.7
Vietnam	-39,498	-55,797	-16,299	9,675	10,883	1,208	12.5	49,174	66,680	17,507	35.6
Peru	1,837	3,542	1,706	9,724	9,687	-37	-0.4	7,888	6,145	-1,743	-22.1
Philippines	-3,877	-4,119	-242	8,720	8,660	-60	-0.7	12,597	12,779	182	1.4
Dominican Republic	3,642	3,654	12	8,947	9,208	260	2.9	5,306	5,554	249	4.7
Indonesia	-12,670	-12,393	277	8,172	7,758	-413	-5.1	20,842	20,151	-691	-3.3
Panama	6,417	7,269	851	6,838	7,721	883	12.9	421	452	31	7.5
Russia	-14,216	-16,498	-2,282	6,659	5,787	-872	-13.1	20,875	22,285	1,409	6.8
Guatemala	2,448	2,841	393	6,657	6,830	174	2.6	4,209	3,989	-219	-5.2
Costa Rica	1,617	1,056	-561	6,497	6,206	-291	-4.5	4,881	5,150	269	5.5
Ecuador	-843	-1,421	-579	5,897	5,533	-364	-6.2	6,740	6,955	215	3.2
Honduras	889	649	-240	5,585	5,475	-110	-2.0	4,696	4,826	130	2.8
South Africa	-2,950	-2,465	485	5,517	5,334	-184	-3.3	8,468	7,799	-669	-7.9
Norway	-1,373	-2,629	-1,256	5,414	3,873	-1,540	-28.5	6,786	6,502	-284	-4.2
Poland	-2,684	-2,418	266	5,352	5,963	611	11.4	8,036	8,381	345	4.3
Egypt	2,570	2,332	-238	5,051	5,486	435	8.6	2,480	3,153	673	27.1
Sweden	-6,523	-7,791	-1,269	4,469	4,356	-113	-2.5	10,992	12,148	1,156	10.5
Qatar	2,857	4,764	1,907	4,428	6,459	2,031	45.9	1,571	1,695	123	7.9
New Zealand	-127	-165	-37	4,061	3,950	-111	-2.7	4,189	4,115	-74	-1.8
Austria	-9,865	-7,425	2,441	3,564	5,748	2,184	61.3	13,429	13,172	-256	-1.9
El Salvador	888	899	11	3,399	3,379	-20	-0.6	2,511	2,479	-31	-1.2

Czech Republic	-1,997	-2,749	-752	3,003	2,790	-213	-71	5,000	5,540	539	108
Kuwait	895	1,755	860	2,983	3,173	190	64	2,088	1,418	-670	-321
Morocco	1,458	1,898	441	3,011	3,479	469	156	1,553	1,581	28	18
Pakistan	-860	-1,301	-440	2,849	2,622	-227	-80	3,709	3,922	213	57
Nigeria	-2,930	-1,431	1,499	2,686	3,178	492	183	5,617	4,609	-1,007	-179
Denmark	-6,268	-7,871	-1,603	2,589	3,160	571	220	8,858	11,031	2,174	245
Ukraine	1,134	1,056	-77	2,486	2,355	-131	-53	1,353	1,298	-54	-40
Oman	1,140	778	-362	2,415	1,938	-478	-198	1,275	1,160	-116	-91
Paraguay	2,126	1,956	-170	2,257	2,118	-139	-62	131	162	31	235
Bangladesh	-4,021	-4,361	-340	2,081	2,327	246	118	6,103	6,688	585	96
Bahrain	1,051	363	-688	2,042	1,408	-634	-311	991	1,045	54	54
Finland	-5,287	-4,622	665	1,877	1,763	-113	-60	7,164	6,385	-778	-109
Hungary	-3,319	-3,396	-77	1,753	1,918	165	94	5,072	5,314	242	48
Jordan	-232	-696	-463	1,581	1,474	-107	-68	1,814	2,170	357	197
Nicaragua	-1,954	-2,233	-279	1,629	1,652	24	14	3,583	3,886	303	84
Portugal	-2,312	-2,169	143	1,573	1,722	149	95	3,885	3,892	6	02
Ethiopia	863	449	-415	1,308	1,021	-287	-220	445	572	128	287
Algeria	-3,357	-1,480	1,877	1,261	999	-262	-208	4,618	2,480	-2,139	-463
Romania	-1,496	-1,441	55	1,114	943	-171	-154	2,610	2,384	-227	-87
Greece	-522	-66	456	1,084	1,444	359	332	1,606	1,509	-96	-60
Luxembourg	531	1,289	758	1,084	1,922	838	773	553	634	80	145
Ghana	187	-105	-292	769	837	69	89	581	943	361	621
Kazakhstan	-658	-471	186	729	737	8	10	1,387	1,208	-179	-129
Lithuania	-562	-166	395	706	934	227	321	1,268	1,100	-168	-133
Croatia	150	164	15	615	713	98	159	466	549	83	178
Tunisia	-52	-8	43	598	461	-137	-228	650	470	-180	-277
Bolivia	76	83	7	562	538	-24	-42	486	455	-31	-64
Angola	-2,173	-418	1,755	525	536	11	21	2,698	955	-1,744	-646
Latvia	-217	-273	-56	510	542	32	62	727	815	88	121
Cambodia	-3,372	-4,849	-1,476	446	513	68	152	3,818	5,362	1,544	404
Sri Lanka	-2,303	-2,360	-56	372	390	19	51	2,675	2,750	75	28
Bulgaria	-616	-448	168	370	462	92	250	986	911	-75	-76
Kenya	-278	-276	2	366	391	25	70	643	667	24	37
Estonia	-607	-592	16	346	410	64	185	953	1,002	48	51
Slovenia	-525	-619	-94	322	345	23	71	847	964	117	138
Cote d'Ivoire	-937	-645	292	309	278	-31	-100	1,247	924	-323	-259
Slovakia	-3,874	-4,764	-890	289	389	100	345	4,163	5,153	990	238
Brunei	168	244	76	266	285	19	72	98	41	-57	-577
Burma	-234	-476	-241	261	345	84	321	495	821	325	656
Malta	4	-28	-32	201	144	-57	-285	197	171	-25	-129
Cyprus	65	130	66	132	204	72	541	68	74	6	89
Laos	-126	-131	-5	16	17	1	67	142	148	6	45
European Union - 28	-168,660	-177,866	-9,206	318,376	337,020	18,644	59	487,037	514,886	27,849	01

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 2017-18	Exports* 2017	Exports* 2018	Change 2017-18		Imports** 2017	Imports** 2018	Change 2017-18	
	2017	2018				Value	Percent			Value	Percent
World	255,077	259,658	4,581	798,957	826,980	28,023	3.5	543,880	567,322	23,442	4.3
China	38,555	38,799	244	56,009	57,140	1,131	2.0	17,454	18,341	887	5.1
Ireland	30,072	29,441	-631	50,021	48,483	-1,538	-3.1	19,949	19,042	-907	-4.5
Canada	25,036	28,198	3,162	58,237	64,057	5,820	10.0	33,201	35,859	2,658	8.0
Brazil	19,795	22,126	2,331	26,911	28,250	1,339	5.0	7,116	6,124	-992	-13.9
Switzerland	9,368	17,765	8,397	37,251	39,298	2,047	5.5	27,883	21,533	-6,350	-22.8
Australia	14,223	13,666	-557	21,968	21,856	-112	-0.5	7,745	8,190	445	5.7
United Kingdom	12,990	13,347	357	70,010	74,064	4,054	5.8	57,020	60,717	3,697	6.5
Singapore	13,488	12,338	-1,150	21,189	21,733	544	2.6	7,701	9,395	1,694	22.0
Japan	12,700	10,470	-2,230	45,987	45,197	-790	-1.7	33,287	34,727	1,440	4.3
Korea	13,015	9,972	-3,043	23,874	22,302	-1,572	-6.6	10,859	12,330	1,471	13.5
Mexico	7,064	8,005	941	32,545	33,804	1,259	3.9	25,481	25,799	318	1.2
Saudi Arabia	8,062	7,503	-559	9,266	9,088	-178	-1.9	1,204	1,585	381	31.6
Argentina	6,258	6,501	243	9,127	9,080	-47	-0.5	2,869	2,579	-290	-10.1
Luxembourg	4,702	5,400	698	6,613	7,153	540	8.2	1,911	1,753	-158	-8.3
Netherlands	5,994	5,229	-765	17,305	17,874	569	3.3	11,311	12,645	1,334	11.8
Chile	2,759	3,347	588	4,561	5,239	678	14.9	1,802	1,892	90	5.0
Colombia	3,030	3,306	276	6,293	7,003	710	11.3	3,263	3,697	434	13.3
Russia	2,901	2,819	-82	4,941	4,932	-9	-0.2	2,040	2,113	73	3.6
Denmark	2,436	2,669	233	5,532	5,756	224	4.0	3,096	3,087	-9	-0.3
France	1,532	2,629	1,097	19,605	21,136	1,531	7.8	18,073	18,507	434	2.4
Sweden	2,532	2,509	-23	5,784	5,787	3	0.1	3,252	3,278	26	0.8
Hong Kong	892	2,338	1,446	10,619	12,818	2,199	20.7	9,727	10,480	753	7.7
Nigeria	2,069	1,898	-171	2,493	2,429	-64	-2.6	424	531	107	25.2
Taiwan	1,836	1,765	-71	9,885	10,027	142	1.4	8,049	8,262	213	2.6
Malaysia	1,750	1,469	-281	3,522	3,457	-65	-1.8	1,772	1,988	216	12.2
Indonesia	1,602	1,414	-188	2,741	2,641	-100	-3.6	1,139	1,227	88	7.7
Turkey	1,178	1,287	109	2,983	3,110	127	4.3	1,805	1,823	18	1.0
Peru	1,159	1,182	23	2,685	3,251	566	21.1	1,526	2,069	543	35.6
Vietnam	973	1,167	194	2,256	2,450	194	8.6	1,283	1,283	0	0.0
Germany	-2,924	1,151	4,075	32,516	34,764	2,248	6.9	35,440	33,613	-1,827	-5.2
South Africa	1,012	938	-74	2,915	2,944	29	1.0	1,903	2,006	103	5.4
Belgium	215	709	494	5,531	5,793	262	4.7	5,316	5,084	-232	-4.4
Honduras	548	562	14	1,212	1,293	81	6.7	664	731	67	10.1
El Salvador	394	561	167	1,131	1,285	154	13.6	737	724	-13	-1.8
Guatemala	531	412	-119	1,648	1,685	37	2.2	1,117	1,273	156	14.0
Oman	278	347	69	534	532	-2	-0.4	256	185	-71	-27.7
Panama	328	223	-105	1,610	1,690	80	5.0	1,282	1,467	185	14.4
Poland	768	207	-561	3,038	3,060	22	0.7	2,270	2,853	583	25.7
New Zealand	298	181	-117	2,791	2,892	101	3.6	2,493	2,711	218	8.7
Hungary	135	179	44	1,126	1,244	118	10.5	991	1,065	74	7.5
Finland	477	148	-329	2,191	1,869	-322	-14.7	1,714	1,721	7	0.4
Slovakia	NA	146	NA	350	357	7	2.0	NA	211	NA	NA

**US FDI Abroad for Given Trade Partners in Rank Order of FDI
(Values in Millions of Dollars)**

Country	FDI*** 2017	FDI*** 2018	% Change 2017-18	FDI Area
World	6,013,335	5,950,991	-1.0	Nonbank Holding Companies, Finance And Insurance, Manufacturing
Netherlands	936,728	883,188	-5.7	Nonbank Holding Companies, Manufacturing, Finance And Insurance
United Kingdom	747,571	757,781	1.4	Nonbank Holding Companies, Finance And Insurance, Manufacturing
Luxembourg	676,418	713,829	5.5	Nonbank Holding Companies, Finance And Insurance, Manufacturing
Ireland	446,383	442,167	-0.9	Nonbank Holding Companies, Finance And Insurance, Information Services
Canada	391,208	401,874	2.7	Manufacturing, Nonbank Holding Companies, Finance And Insurance
Switzerland	249,968	278,044	11.2	Nonbank Holding Companies, Manufacturing, Finance And Insurance
Singapore	274,260	218,835	-20.2	Nonbank Holding Companies, Manufacturing, Wholesale Trade
Australia	168,855	162,983	-3.5	Nonbank Holding Companies, Manufacturing, Mining
Germany	136,128	140,331	3.1	Nonbank Holding Companies, Manufacturing, Finance And Insurance
Japan	129,064	125,488	-2.8	Finance And Insurance, Manufacturing, Information Services
China	107,556	116,518	8.3	Manufacturing, Wholesale Trade, Finance And Insurance
Mexico	109,671	114,877	4.7	Manufacturing, Nonbank Holding Companies, Finance And Insurance
France	85,572	86,863	1.5	Manufacturing, Finance And Insurance, Nonbank Holding Companies
Hong Kong	81,234	82,546	1.6	Nonbank Holding Companies, Wholesale Trade, Manufacturing
Brazil	68,272	70,878	3.8	Manufacturing, Finance And Insurance, Mining
Belgium	54,954	64,051	16.6	Manufacturing, Wholesale Trade, Finance And Insurance
India	44,458	45,984	3.4	Professional, Scientific, And Technical Services, Manufacturing, Finance And Insurance
Korea	41,602	41,532	-0.2	Manufacturing, Finance And Insurance, Wholesale Trade
Sweden	34,622	39,307	13.5	Nonbank Holding Companies, Manufacturing, Finance And Insurance
Italy	30,708	38,479	25.3	Manufacturing, Information Services, Finance And Insurance
Spain	33,128	36,962	11.6	Manufacturing, Nonbank Holding Companies, Information Services
Norway	29,187	27,913	-4.4	
Israel	26,667	27,144	1.8	Manufacturing, Professional, Scientific, And Technical Services, Information Services
Chile	25,884	26,146	1.0	Mining, Finance And Insurance, Manufacturing
Thailand	15,006	17,667	17.7	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Taiwan	17,031	17,530	2.9	Manufacturing, Wholesale Trade, Finance And Insurance
UAE	16,785	17,303	3.1	Mining, Wholesale Trade, Manufacturing
Argentina	14,907	15,196	1.9	Manufacturing, Information Services, Depository Institutions
Russia	13,881	14,795	6.6	Manufacturing, Wholesale Trade, Nonbank Holding Companies
Malaysia	15,080	13,581	-9.9	Manufacturing, Nonbank Holding Companies, Finance And Insurance
Denmark	13,873	13,205	-4.8	Nonbank Holding Companies, Manufacturing, Finance And Insurance
Poland	12,604	12,977	3.0	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Saudi Arabia	11,085	11,379	2.7	Nonbank Holding Companies, Mining, Wholesale Trade
New Zealand	11,938	11,289	-5.4	
Indonesia	15,171	11,140	-26.6	Mining, Nonbank Holding Companies, Depository Institutions
Qatar	8,183	10,636	30.0	
Austria	7,819	8,579	9.7	Manufacturing, Finance And Insurance, Wholesale Trade
Egypt	9,352	8,384	-10.4	
Hungary	7,131	7,811	9.5	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Colombia	7,222	7,737	7.1	Mining, Manufacturing, Finance And Insurance
Philippines	7,116	7,645	7.4	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
South Africa	7,334	7,621	3.9	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
Czech Republic	5,406	6,737	24.6	Manufacturing, Information Services, Professional, Scientific, And Technical Services
Peru	6,370	6,403	0.5	Mining, Manufacturing, Wholesale Trade
Nigeria	5,774	5,630	-2.5	

Panama	4,706	5,050	7 3	Nonbank Holding Companies, Wholesale Trade, Mining
Turkey	4,266	4,656	9 1	Manufacturing, Wholesale Trade, Finance And Insurance
Romania	3,620	4,019	11 0	
Algeria	3,030	3,571	17 9	
Cyprus	1,650	3,461	109 8	
El Salvador	3,037	3,277	7 9	
Portugal	2,060	2,825	37 1	Wholesale Trade, Manufacturing, Professional, Scientific, And Technical Services
Finland	3,318	2,482	-25 2	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
Vietnam	2,010	2,358	17 3	
Dominican Republic	2,140	2,020	-5 6	Manufacturing, Wholesale Trade, Information Services
Ghana	1,698	1,661	-2 2	
Costa Rica	1,567	1,625	3 7	Manufacturing, Professional, Scientific, And Technical Services, Mining
Oman	1,840	1,624	-11 7	
Greece	1,224	1,415	15 6	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Guatemala	1,048	1,026	-2 1	
Bulgaria	848	928	9 4	
Ecuador	779	898	15 3	Mining, Manufacturing, Finance And Insurance
Slovakia	867	847	-2 3	
Bahrain	423	647	53 0	
Malta	601	620	3 2	
Bolivia	598	618	3 3	
Bangladesh	460	513	11 5	
Honduras	1,405	504	-64 1	
Morocco	412	408	-1 0	
Ukraine	398	402	1 0	
Angola	780	394	-49 5	
Pakistan	518	386	-25 5	
Kenya	405	380	-6 2	
Slovenia	369	369	0 0	
Kuwait	296	313	5 7	
Tunisia	279	251	-10 0	
Croatia	199	187	-6 0	
Sri Lanka	168	172	2 4	
Lithuania	154	171	11 0	
Cambodia	151	165	9 3	
Paraguay	179	148	-17 3	
Nicaragua	187	138	-26 2	
Estonia	72	76	5 6	
Latvia	71	70	-1 4	
Brunei	19	15	-21 1	
Jordan	232	NA	NA	
European Union - 28	3,244,095	3,269,739	0 8	Nonbank Holding Companies, Finance And Insurance, Manufacturing

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