2021 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

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Office of the United States Trade Representative
Ambassador Katherine Tai

LIST OF FREQUENTLY USED ACRONYMS

AD	Antidumping
AGOA	African Growth and Opportunity Act
APEC	Asia-Pacific Economic Cooperation
APHIS	Animal and Plant Health Inspection Service
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
CAFTA–DR	Dominican Republic–Central America–United States Free Trade Agreement
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CVD	Countervailing Duty
DOL	U.S. Department of Labor
DSB	WTO Dispute Settlement Body
DSU	WTO Dispute Settlement Understanding
EU[1]	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GI	Geographical Indication
GPA	WTO Agreement on Government Procurement
GSP	Generalized System of Preferences
HS	Harmonized System Code
HTS	Harmonized Tariff Schedule Code
ICT	Information and Communication Technology
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
MRL	Maximum Residue Limit
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

[1] Unless specified otherwise, all references to the European Union refer to the EU-27.

TBT	Technical Barriers to Trade
TFA	WTO Trade Facilitation Agreement
TIFA	Trade and Investment Framework Agreement
TRQ	Tariff-Rate Quota
USAID	U.S. Agency for International Development
USDA	U.S. Department of Agriculture
USMCA	United States–Mexico–Canada Agreement
USTR	United States Trade Representative
VAT	Value-Added Tax
WTO	World Trade Organization

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FOREWORD

SCOPE AND COVERAGE

The 2021 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 36th 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 2021 Trade Policy Agenda and 2020 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 61 countries, the European Union, Taiwan, Hong Kong, and the Arab League. The discussion of Chinese trade barriers is structured and focused to align more closely with other Congressional reports prepared by USTR on U.S.-China trade issues. The China section includes cross-references to other USTR reports where appropriate. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States.

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that 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). Since early 2020, there were significant trade disruptions as a result of temporary trade measures taken unique to the COVID-19 pandemic.

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, preshipment inspection, customs barriers and shortcomings in trade facilitation or in valuation practices, and other market access barriers);

- Technical barriers to trade (*e.g.*, unnecessarily trade restrictive standards, conformity assessment procedures, labeling, 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, especially export subsidies (*e.g.*, subsidies contingent upon export performance 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.*, closed bidding and bidding processes that lack transparency);

- 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 (*e.g.*, barriers that encompass more than one category, such as bribery and corruption[i]).

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 2021 Trade Policy Agenda and 2020 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 non-tariff 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 non-tariff barriers. For the reasons stated above, estimating the impact of such non-tariff 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 non-tariff measure, it then becomes derivatively difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

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

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

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

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

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

March 2021

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. trade balance with Algeria shifted from a goods trade deficit of $1.5 billion in 2019 to a goods trade surplus of $248 million in 2020. U.S. goods exports to Algeria were $726 million, down 27.4 percent ($274 million) from the previous year. Corresponding U.S. imports from Algeria were $478 million, down 80.7 percent. Algeria was the United States' 81st largest goods export market in 2020.

U.S. foreign direct investment in Algeria (stock) was $2.7 billion in 2019, a 7.7 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Algeria Trade and Investment Framework Agreement

The United States and Algeria signed a Trade and Investment Framework Agreement (TIFA) on July 13, 2001. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Algeria.

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 2019 (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 2019 (latest data available). Nearly all finished manufactured products, dried distillers grains, and corn gluten feed 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 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, Algeria implemented new temporary additional safeguard duties (Droit Additionnel Provisoire de Sauvegarde or DAPs) of 30 percent to 200 percent (the latter extended only to ten cement tariff lines under 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 (EU)-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 EU–Algeria Association Agreement. The original DAP list was revised in April 2019 to exempt a number of food- and agriculture-related products including tree nuts, peanuts, butter, dried fruits, and fresh or chilled beef.

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 Algerian dinars (DZD) 20,000 Algerian dinars (approximately $169).

Non-Tariff 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.

In June 2020, the Algerian Government imposed foreign exchange guidelines which effectively banned the import of thirteen agricultural products. While most restrictions were classified as seasonal, the ban on almonds remained in effect throughout 2020. In February 2021, the Ministry of Commerce compiled a new schedule for 2021 distinguishing a seasonal ban for each agricultural product. The new schedule adjusts a year-round restriction on almond imports to a seasonal ban from June to August 2021.

Quantitative Restrictions

Algeria released a new book of specifications concerning the automotive industry in August 2020, replacing the previous automotive regulatory regime established in 2017. The new book of specifications covers automobiles, buses, trucks, and construction equipment. The book of specifications established an import quota of up to 200,000 vehicles per year, with an annual cap of $2 billion. Due to customs, VAT, and other taxes, vehicles cost more than double the market rates when purchased by individuals overseas and imported. While the import quota on automobile kits for assembly of passenger vehicles is currently set at zero, the new regulation indicated that the government would set a new quota for automotive companies that receive authorization to engage in local assembly or manufacturing. Although a provision in the 2020 Finance Law enacted on January 1, 2020 allowed individuals who supply their own foreign currency to import used car models made during the last three years, on October 3, 2020, the Ministry of Industry, through administrative decree, indefinitely suspended importation of used vehicles.

Algeria has established a maximum import volume of four million metric tons of bread (common) wheat, accounting for nearly two-thirds of annual average imports. The Algerian state grains agency OAIC reports that from October 2019 to September 2020, import restrictions saved an estimated $1 billion in foreign currency.

Import Licensing

In January 2019, Algeria eliminated import license requirements for all products except passenger 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 with a bank 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, Algeria enacted various new safety requirements for imported vehicles, with a focus on passenger automobiles. Algerian Government officials have asserted over the last six years that these requirements apply to all vehicles, but the requirements appear to affect imported vehicles disproportionately. 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. Algeria also requires this certificate in order for importers to obtain from a bank the letter of credit necessary to finance a vehicle importation. These restrictions remain in place even as the government has restricted the volume of automobile imports.

Food Products

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

All products containing pork or pork derivatives are prohibited.

Sanitary and Phytosanitary Barriers

The Algerian Government currently bans the production, importation, distribution, or sale of seeds that are the products of biotechnology. There is an exception for biotechnology seeds imported for research purposes.

In 2020, U.S. and Algerian authorities finalized certificates for chicken-hatching eggs, day-old chicks, and bovine embryos. U.S. and Algerian veterinary authorities continue to engage in negotiations on export certificates to allow for the importation of U.S. semen, beef cattle, dairy breeding cattle, and beef and poultry meat and products.

GOVERNMENT PROCUREMENT

Algeria announced in August 2015 that all ministries and state-owned enterprises 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 (approximately $87 million). In 2017, this requirement delayed payments to at least one U.S. company.

As Algeria is not a Member of the WTO, it is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Algeria remained on the Priority Watch List in the 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. Algeria permits citizens to purchase goods from outside the country using international credit cards, with a maximum value per transaction of DZD 100,000 (approximately $776). Algerian foreign exchange regulations prohibit the use of certain online payment processors to transfer money from one account to another.

INVESTMENT BARRIERS

Prior to 2020, Algeria's investment law required Algerian ownership of at least 51 percent in all projects involving foreign investments. On June 3, 2020, the Complementary Finance Law amended the investment law to limit the 51 percent requirement to strategic sectors, which include mining, upstream energy activities, industries related to the military, transportation infrastructure, and pharmaceutical production. 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.

The 2020 book of government-modified specifications for the automotive industry increased domestic content requirements. Minimum local integration rates for domestic assembly plants will now be 30 percent in the first year, 35 percent after three years, 40 percent after four years, and 50 percent after five years. Additionally, the book of specifications mandates that automotive importers be 100 percent Algerian-owned, and retroactively excludes foreign companies from holding ownership stakes in importation companies and dealerships.

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 (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. SOEs can leverage their position in the market to gain advantage over privately-owned competitors. For

example, state-owned telecommunications provider Algerie Telecom holds a monopoly over all undersea data cable traffic in and out of Algeria, offering it a considerable advantage over private companies operating in the sector.

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $1 million in 2020, a 99.7 percent decrease ($419 million) over 2019. U.S. goods exports to Angola were $471 million, down 12.0 percent ($64 million) from the previous year. Corresponding U.S. imports from Angola were $472 million, down 50.6 percent. Angola was the United States' 89th largest goods export market in 2020.

TRADE AGREEMENTS

The United States–Angola Trade and Investment Framework Agreement

The United States and Angola signed a Trade and Investment Framework Agreement (TIFA) on May 19, 2009. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Angola.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Angola's average Most-Favored-Nation (MFN) applied tariff rate for all products was 10.2 percent in 2019 (latest data available). Angola's average MFN applied tariff rate was 19.3 percent for agricultural products and 8.7 percent for non-agricultural products in 2019 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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.

Revised customs measures entered into force in August 2018. These measures exempt imports of household products, medicines, and hospital equipment from tariffs. They also include a reduction of the consumption tax and customs duties for imports of malt beer, tobacco, lamb, and goat meat. They assign minimum tax and customs duty rates for the import of essential goods and other goods not locally manufactured. Medicines, educational materials (*i.e.*, schoolbooks), and automotive parts imported by automotive assembly investors in Angola remain exempted from customs duties under this regime.

In response to the COVID-19 pandemic, Angola has allowed all medicines and biosafety material to be imported duty free.

Taxes

In October 2019, Angola introduced a 14 percent value-added tax (VAT) and revoked a 10 percent consumer tax previously imposed on all products, domestic and imported, albeit with numerous product and service exemptions. In August of 2020, the Government of Angola approved VAT decreases for certain agricultural products. It also introduced to changes to corporate income tax, property tax, and individual income tax rates.

Non-Tariff Barriers

Import Licensing

The importation of certain goods requires 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 the Ministry of Commerce and a specific import license issued by the Ministry of Health may import pharmaceuticals products.

Import Restrictions

Presidential Decree No. 23/19, which entered into force on January 14, 2019, aims to restrict the importation of certain products unless the importer can demonstrate the product is not available domestically. The Decree currently exceeds 54 products, mainly agricultural goods, and also applies to any imports that compete with goods produced in the Luanda-Bengo special economic zone. Impacted products include poultry, maize flour, and diapers. In 2020 (latest data available), U.S. poultry meat exports to Angola fell by 45 percent. The United States continues to raise concerns about this decree with the Government of Angola bilaterally and at the WTO Council for Trade in Goods and at the WTO Committee on Market Access.

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

Foreign Exchange Restrictions

Angola has pledged to stop providing treasury funds for the import of products of high domestic consumption which Angola has the capacity to produce, effective August 24, 2020. According to the statement issued by the Ministry of Industry and Trade, this measure, which is part of the Program to Support Production, Diversification of Exports and Import Substitution, aims to protect national production and promote local economic development. The measure focuses on the following 11 products: sorghum, millet, beans, peanuts, carrots, garlic, onions, tomatoes, sweet potatoes, bottled water, and dishwashing soap. Importers may import the restricted items provided they have access to their own sources of foreign exchange.

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 voluntarily 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.

Angola has not yet notified its customs valuation legislation to the WTO, nor has it responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

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 barriers to trade.

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.

Sanitary and Phytosanitary Barriers

Angola has not introduced a risk management scheme for veterinary and sanitary control purposes. Therefore, consignments of imports classified in Chapters 2 to 23 of the Harmonized System (including animal and vegetable products and foodstuffs) must be laboratory tested prior to entry and accompanied by a health certificate.

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 and Fisheries 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 and Fisheries 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 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.

On December 23, 2020, the Angolan National Assembly approved Law No. 41/20, revising its Public Procurement Law (PPL) and revoking Law 9/16 of June 16, 2016. The revised PPL entered into force on January 22, 2021. The new law seeks to increase transparency in public resources utilization and to simplify procedures in public works and public services procurement, as well as the acquisition of goods by public entities. The most important changes presented by the law include encouraging administrative concessions regarding the granting of rights, land or property related to public works, public services, and exploration of the public domain. The law also calls for such contracts to be carried out though public-private-partnerships. The law also provides that public procurement contract values in the amount of at least 500 million Kwanzas (approximately $770,000) or more be approved by the President of the Republic and submitted to the Tribunal de Contas (Supreme Audit Institution) for oversight.

The new law introduces two new procurement procedures. The first is the Dynamic Electronic Procedure, which provides for the public acquisition of standard goods and services using an electronic platform. Any interested party that is properly registered may participate. The second spells out the procedure for emergency procurement, such as those required during a state of calamity or during a pandemic, such as COVID-19. A punitive clause for the most serious breaches of contract by an individual or corporation party to such contracts contains fines ranging from $1,650 to $3,300 for individuals, and $6,600 to $15,300 for corporations.

Through the revised and simplified PPL Angola seeks to expand local investment and also attract more foreign direct investment. Angola also expects that the PPL will reduce corruption, nepotism, and fraud, while increasing competitiveness and improving the Angolan business environment. The United States will monitor implementation and enforcement of the law in light of the continued weak state of institutions and the lack of necessary technical capacity to implement and enforce laws.

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. Stakeholder continue to have concerns regarding delays in the processing of patent applications.

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 to import 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 private investment law aimed at facilitating investment. The 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 Agency for Private Investment and Exports Promotion, a state-run agency with the goal of facilitating investment and export processes.

The 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.

OTHER BARRIERS

Bribery and Corruption

Corruption remains prevalent in Angola for reasons including an inadequately trained civil service, a highly centralized bureaucracy, a 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.

Export Taxes

On December 29, 2019, a revised customs tariff code entered into force, which among other things eliminates the 5 percent export tax on crude ores.

Import Policies

To facilitate payment for imports, on January 20, 2020, the BNA, within the framework of gradual liberalization of the foreign exchange market, established new rules seek to eliminate bureaucratic obstacles and exempt transactions of up to $25,000 from requiring contracts for import of goods and services.

Foreign Exchange

The BNA issued Notice no. 17/20 of August 3, 2020, approving new rules and procedures governing foreign exchange transactions applicable to individuals. Among other amendments, effective September 2, 2020, foreign employees working in Angola must open a local bank account into which income from their employer will be deposited in local currency; employers may no longer transfer remunerations to foreign employees' accounts abroad. However, a foreign employee may purchase foreign currency upon presentation of a valid employment agreement and work permit. Under the notice, Angolan banking institutions should also verify that the employee income was transferred by a tax compliant employer.

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).

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, efforts to enforce the boycott have 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.

In 2020, the United Arab Emirates, Bahrain, Morocco, and Sudan announced normalization agreements with Israel. The agreements, often referred to as the "Abraham Accords," include an intent to expand formal trade and investment ties, among other economic operations, between these Arab League countries and Israel. Egypt and Jordan, having signed peace treaties with Israel, have long engaged in formal bilateral trade with Israel and publish official statistics regarding that trade. Currently, 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 (USTR) 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 U.S.C. 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 the boycotting countries to the presence of prohibited boycott requests and the adverse impact of those

requests on U.S. firms and on Arab League members' ability to expand trade and investment ties with the United States. In this regard, OAC and 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 with the United States and 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.

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 slightly from 47 in 2019 to 37 in 2020.

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 United States 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: Morocco agreed to normalize relations with Israel in August 2020. Prior to the normalization agreement, Morocco did not enforce the boycott consistently. Moroccan law contained no specific references to the Arab League boycott and the government did 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: Sudan and Israel announced a normalization agreement in October 2020 that would include Sudan renouncing the boycott. As of the end of 2020, Sudan had not yet passed and implemented the law repealing its adherence to the boycott. Though adherence to the primary boycott was required under pre-existing Sudanese law, there appear to have been 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: In 2020, Bahrain agreed to normalize relations with Israel and expand already robust economic ties including establishing flights between the two countries.

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 CBO 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, U.S. companies have made efforts 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: In August 2020, the United Arab Emirates signed a normalization agreement with Israel, and as part of its agreement, issued a decree ending its adherence to the Arab League Boycott. Since that announcement, the two countries have rapidly established commercial connections, opening direct trade, phone, mail, banking, and passenger flight connections.

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 memberships overlap 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 $1.8 billion in 2020, a 44.6 percent decrease ($1.4 billion) over 2019. U.S. goods exports to Argentina were $6.0 billion, down 27.0 percent ($2.2 billion) from the previous year. Corresponding U.S. imports from Argentina were $4.2 billion, down 15.4 percent. Argentina was the United States' 34th largest goods export market in 2020.

U.S. exports of services to Argentina were an estimated $7.6 billion in 2019 and U.S. imports were $2.6 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $9.6 billion in 2018 (latest data available), while sales of services in the United States by majority Argentina-owned firms were $101 million.

U.S. foreign direct investment in Argentina (stock) was $10.7 billion in 2019, a 12.4 percent increase from 2018. U.S. direct investment in Argentina is led by manufacturing, information services, and finance and insurance.

TRADE AGREEMENTS

The United States–Argentina Trade and Investment Framework Agreement

The United States and Argentina signed a Trade and Investment Framework Agreement (TIFA) on March 23, 2016. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Argentina.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Argentina's average Most-Favored-Nation (MFN) applied tariff rate was 13.5 percent in 2019 (latest data available). Argentina's average MFN applied tariff rate was 10.3 percent for agricultural products and 14.0 percent for non-agricultural products in 2019 (latest data available). Argentina has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 31.8 percent.

Argentina is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 that also comprises Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 12.5 percent.

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Argentina is permitted to maintain a list of 100 exceptions to the CET until December 31, 2021. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR 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.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a 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 members 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 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. Argentina also has a separate bilateral trade agreement with Mexico regarding quotas for automobiles and automotive parts. In March 2019, Argentina and Mexico agreed to retain quotas for three final years before implementing bilateral free trade in these goods.

On November 15, 2016, Argentina issued Decree No. 1174/2016, which reduces by 25 percent 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, effective April 1, 2017, eliminated the 35 percent duty on imports of a number of electronic devices. 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 goods imported for consumption, to 3 percent. Temporary imports, inputs used to produce goods for export, and imported goods for scientific and technological research are exempted from this tax. The increase in the statistical tax to 3 percent expired December 31, 2020, when the rate reverted to the previous rate of 2.5 percent.

Decree 332/2019 established a set of caps on the dollar value of the tax faced by imported goods. The Argentine 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. Pursuant to Decree 548/2019, in the case of capital goods imported exclusively for renewable energy projects included in the RenovAr Program, the maximum tax is set at $500.

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. When goods are imported, Argentina collects a percentage of the value of imports as income tax withholding to be applied to the importer's income taxes. Resolution 3373 established an income tax withholding rate of six percent of the value of the imported goods for imports of all goods, except goods intended for the importer's consumption or use. For those goods, an income tax withholding rate of 11 percent 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 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.

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 of the automobile 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.

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.

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.

Non-Tariff 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 (described below) 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 prohibits imports of used clothing.

Resolution 253/2020 restricts imports of books to 500 units per month for a one-year period beginning September 15, 2020.

Import Restrictions

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that are not prohibited from being imported into Argentina, 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 Argentine Government exempted a list of products from the requirement to obtain the import certificate.

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 restricted 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. Under Resolution 4815, as of September 16, 2020, when international transportation tickets and international tourism services are sold in Argentina, an amount equal to 35 percent of the price of the ticket or service is collected as income tax withholding. 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. The SIMI system requires importers to submit detailed information electronically about goods to be imported into Argentina, including whether the 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 Argentine 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. On January 9, 2020, through Resolution 1/2020, Argentina moved 300 tariff lines from the automatic import licensing system to the non-automatic import licensing system. A total of 1,446 tariff lines currently are subject to non-automatic licenses. Through Resolution 1/2020, Argentina reduced the validity period for a non-automatic import license from 180 days to 90 days after approval. Firms in a variety of sectors have reported extensive delays in receiving import licenses, making it difficult to supply manufacturing facilities and reach Argentine consumers. Firms have also reported a lack of transparency in information required in import license applications, further increasing the unpredictability of doing business in Argentina.

Customs Barriers and Trade Facilitation

Argentina continues to use 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. Argentina publishes a list of reference prices and covered countries.

Certificates of Origin

Certificates of origin have been a key element in Argentine import procedures to enforce trade remedy measures, reference prices, and certain geographical restrictions. Argentina requires certificates of origin for certain categories of products, including certain organic chemicals, tires, bicycle parts, flat-rolled iron and steel, certain iron and steel tubes, air conditioning equipment, wood fiberboard, most fabrics (*e.g.*, wool, cotton, other vegetable), carpets, most textiles (*e.g.*, knitted, crocheted), apparel, footwear, metal screws and bolts, furniture, toys and games, brooms, and brushes. To receive the MFN tariff rate, a U.S. product's certificate of origin must be authenticated by an Argentine embassy or consulate, or carry a U.S. Chamber of Commerce seal. For products with many internal components, such as machinery, each individual part is often required to 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.

Consumption Incentives

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, Argentina 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, Argentina launched the "Ahora 3 y 6" program, which allows individuals

to finance the purchase of domestically manufactured clothing, footwear, certain leather goods, toys, and board games in three or six monthly, interest-free installments. On December 28, 2018, Argentina 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. The Argentine Government further extended the Ahora 12, Ahora 18, and Ahora 3 y 6 programs to December 31, 2020, through Resolution 353/2020, and then through March 31, 2021 through resolution 730/2020. The new resolution removed cellphones from the list and included some medical equipment (such as defibrillators, and sterilization equipment), prescription medicine, and some domestic services such as educational services (language and drama courses, among others, excluding educational services offered in schools and universities), personal care services (hairdressers, barber shops, and beauty salon), and car and motorbike repair services. The resolution also established a three-month grace period for the Ahora 12 and Ahora 18 programs.

SANITARY AND PHYTOSANITARY BARRIERS

Poultry

Argentina does not allow imports of fresh, frozen, and chilled poultry from the United States due to purported 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 with status updates 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 continues to engage with Argentina to resolve the market access issues for poultry.

Horticultural Products

Argentina ceased issuing permits for imports of a variety of U.S. horticultural exports in 2012, without explanation or justification. Since then, through meetings with the United States, Argentina has agreed 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

Local Content Subsidies

Argentina maintains certain local-sourcing support 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. If 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 E-1/2017.

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 provincial level. On September 5, 2018, Argentina issued Decree 800/2018, which provides the regulatory framework for Law 27,437. On November 16, 2016, Argentina passed a law No. 27,328, which 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 Special 301 Report. The situation for innovators in the pharmaceutical and agrochemical sectors presents significant challenges. First, the scope of patentable subject matter remains significantly restricted under Argentine law. Second, there is inadequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the Argentine Government in conjunction with its lengthy marketing approval process. In addition, the United States encourages Argentina to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations. Finally, the patent pendency backlog continues to result in unreasonable delays.

In addition, the absence of sustained enforcement efforts – including under 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. For example, "La Salada," continues to be one of South America's largest black markets for counterfeit and pirated goods. The existing legislative regime and weak 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

Argentina 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, which came into force July 23, 2019, all movie theaters must project at least one domestically produced film for the entirety of one week per quarter.

The Media Law 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 importation of goods via mail or through an express delivery service provider. As of April 1, 2019, door-to-door non-commercial mail shipments with a value of $3,000 or less and a weight not greater than 20 kilograms may be delivered. Pursuant to Decree 221/2019, consumers are subject to annual limits on the tax-free allowance on purchases. 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. Due to significant import-related delays and lack of transparency, such as non-automatic import licenses, the express and postal channels are essential for electronic commerce. These limitations on express couriers in effect constrain electronic commerce in Argentina across sectors.

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

As part of a set of measures adopted in 2020 intended to address economic issues created by the COVID-19 pandemic, the Argentine Government issued Decree 311/2020, which froze prices and prohibited the suspension of delinquent accounts for a number of information communication technology (ICT) services, including fixed and mobile telephone services, Internet access services, and pay television services, until August 31, 2020. On August 21, 2020, the Argentine Government issued Decree 690/2020, which extended the freeze on the prices for these ICT services until December 31, 2021 and amended the Information and Communications Technologies Law to change the regulatory status of these ICT services to "essential and strategic public services" and therefore subject to additional regulation by the National Communications Agency (ENACOM), including full rate regulation and additional universal service obligations. On September 20, 2020, the Argentine Government issued Decree 756/2020, which extended the prohibition on suspension of delinquent accounts through December 31, 2020. U.S stakeholders are concerned that

these decrees and the imposition of additional regulation by ENACOM will undermine competition and discourage additional investment in the ICT sector in Argentina.

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

Since 2019, the Argentine Government and the Central Bank have issued a series of decrees and norms regulating access to foreign exchange markets in order to mitigate the financial crisis.

As of September 15, 2020, pursuant to Communication A71067/2020, Argentine nationals and residents can make purchases in foreign currency equal to no more than $200 per month. Purchases abroad with credit and debit cards count against the $200 monthly quota. Although no limit on credit or debit card purchases is imposed, if monthly expenses surpass the $200 quota the deduction, corresponding to the amount of excess spending, will be carried over to subsequent months until the total amount is covered. Also, the regulation prohibits individuals from receiving government assistance and high-ranking government officials from purchasing foreign currency. Individuals must receive Central Bank approval to purchase foreign currency in excess of the $200 quota.

Pursuant to Public Emergency Law 27,541, issued December 23, 2019, all purchases denominated in foreign currency and individual expenses incurred abroad, in person or online, including international online purchases from Argentina, paid with credit or debit cards issued by Argentine banks, are subject to a 30 percent tax. AFIP Resolution 4815 imposes an additional 35 percent withholding tax that may be deducted from an individual's income or wealth tax obligation.

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

As of October 2019, 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. If transfers are made from their own foreign currency accounts in Argentina to their own accounts abroad, individuals do not need to obtain Central Bank approval. Through Communication A6869 issued by the Central Bank in January 2020, companies will be able to repatriate dividends without Central Bank authorization equivalent to a maximum of 30 percent of new foreign direct investment (FDI) made by the company in the country. To promote FDI, the Central Bank announced in Communication A7123 in October 2020 that it will allow free access to the official foreign exchange market to repatriate investments, provided that the capital contribution was transferred and sold in Argentine pesos

through the foreign exchange market as of October 2, 2020 and that the repatriation takes place at least two years after the transfer and settlement of those funds.

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 in September 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 and from affiliates require Central Bank approval if the company needs to purchase foreign currency. Pursuant to Communication A7030 from May 2020, the Central Bank requires that importers submit an affidavit stating that the total amount of foreign currency requested (including the current payment request) does not exceed the amount of the payments for purchases by that importer and cleared by customs between January 1, 2020, and the day prior to accessing the foreign exchange market. The total amount of payments for import of goods should also include the payments for amortizations of lines of credit or commercial guarantees.

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.

In September 2020, the Central Bank issued Circular A7106, limiting companies' ability to purchase foreign currency to repay any external financial debt (including intercompany debt) and dollar-denominated local securities. Companies will have access to no more than 40 percent of the principal amount coming due from October 15, 2020 to March 1, 2021, and for the remaining 60 percent of the debt, the company must file a refinancing plan with the Central Bank. Debt from international organizations or their associated agencies or guaranteed by them and debt to official credit agencies or guaranteed by them are exempt from this restriction. In addition, the Central Bank, through Communication A701, prohibited access to the foreign exchange market to pay for external debt, imports, and for saving purposes for individuals and companies that have sold foreign currency denominated securities within the previous 90 days.

On October 16, 2020, the Central Bank issued Communication A7138 establishing that importers requesting access to the foreign market in excess of $50,000 must receive prior approval from the Central Bank. On October 30, 2020, through Communication A7151, the Central Bank also obligated commercial banks to require importers to submit a sworn declaration of their import request so the request may be cross-referenced to the Central Bank database of importers, to ensure compliance with the foreign exchange controls. These measures have increased delays for import operations.

Local Content Requirements

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.

OTHER BARRIERS

Export Policies

Argentina maintains export taxes on most exports of goods and services. As of December 14, 2019, when Decree 37/2019 came into effect, the Argentine 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, when Public Emergency Law 27,541 came into effect, Argentina established export tax ceilings on exports of certain agricultural commodities, industrial products, oil, gas, minerals, and services. 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 Argentine Government issued Decree 486, increasing the export tax on biodiesel from 8 percent to 15 percent as of July 1, 2018. On October 4, 2020, the Argentine Government issued Decrees 789/2020 and 790/2020 reducing export taxes on soybean products for three months to encourage exports. Export taxes on soybeans were lowered from 33 percent to 30 percent during October, to 31.5 percent during November, and 32 percent during December, returning to 33 percent in January 2021. Processed soybean products (including soymeal and soybean oil) were taxed at 28 percent instead of 33 percent during October, 29.5 percent during November, and 30 percent during December, and were set for 33 percent as of January 2021. This differential provides an incentive to export processed soybean oil and soymeal instead of whole soybeans. The MERCOSUR CCC, if entered into 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 Argentine Government consistently extended the ban in subsequent years, although a current extension is still pending.

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) 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. On October 6, 2020, through Disposition 14/2020, the government increased the number of products included in the program to a total of 400, with prices adjusting to the level registered in July 2020.

In February 2016, Argentina 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.

On March 19, 2020, Argentina launched a new price control program called *"precios máximos"* with the objective of controlling prices of 18 categories of products, including food and beverage, cleaning and hygiene products. The program has been extended and modified several times, allowing for price adjustments and increasing the number of products included in the program. *Precios máximos* was last extended on October 30, 2020, through Resolution 473/2020, until January 31, 2021. On November 12, 2020, the Argentine Government issued Resolution 552/2020 removing from the program 50 categories of products with high price level and low demand. The goods removed totaled 100 products including wines, whisky, energy drinks, brie cheese, soy milk, and makeup products.

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 Argentine 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 $9.1 billion in 2020, a 40.2 percent decrease ($6.1 billion) over 2019. U.S. goods exports to Australia were $23.5 billion, down 9.6 percent ($2.5 billion) from the previous year. Corresponding U.S. imports from Australia were $14.4 billion, up 33.1 percent. Australia was the United States' 16th largest goods export market in 2020.

U.S. exports of services to Australia were an estimated $22.0 billion in 2019 and U.S. imports were $8.6 billion. Sales of services in Australia by majority U.S.-owned affiliates were $54.7 billion in 2018 (latest data available), while sales of services in the United States by majority Australia-owned firms were $15.4 billion.

U.S. foreign direct investment in Australia (stock) was $162.4 billion in 2019, a 1.0 percent decrease from 2018. U.S. direct investment in Australia is led by nonbank holding companies, mining, and manufacturing.

TRADE AGREEMENTS

The United States–Australia Free Trade Agreement

The United States–Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. Under this agreement, as of January 1, 2015, Australia provides duty-free access to all U.S. exports. The United States and Australia meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

Low Value Goods Taxes

In 2017, Australia passed an amendment to the New Tax System (Goods and Services Tax) Act 1999 to apply its 10 percent goods and services tax (GST) to imports of low-value goods. The legislation, Treasury Laws Amendment (GST Low Value Goods) Bill 2017, entered into force on July 1, 2018 and placed the onus of GST collection and remittance on overseas vendors, including online marketplaces or other platforms. The law applies to imported goods valued at A$1,000 or less (approximately $767) and sold to consumers in Australia. Vendors with annual sales to Australian customers in excess of A$75,000 (approximately $57,500), or for non-profits in excess of A$150,000 (approximately $115,000), 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). In 2003, Australia closed its market to U.S. beef after detection of BSE in the United States. In 2017, Food Standards Australia New Zealand conducted an individual country risk analysis and determined that U.S. beef imports are safe for human consumption. The findings also confirmed that U.S. beef meets the negligible BSE risk requirements of the World Organization for Animal Health (OIE). As a result, in May 2018, Australia lifted its ban on heat-treated, shelf-stable beef products; however, Australia's market remains closed to fresh U.S. beef and beef products. In August 2019, Australia completed an on-site audit of the United States fresh meat processing sector. 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 $253 million in 2020. However, due to Australia's stated 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 from the United States 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 U.S. Department of Agriculture Animal and Plant Health Inspection Service 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 remains 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 requirements (as set out in an import risk analysis) mandate that imported poultry meat products be cooked to a minimum core temperature of 74°C for 165 minutes or the equivalent. Given this temperature requirement, Australia 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. Negotiations are ongoing. 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 and pears 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. In November 2018, Australia announced it was commencing a new risk analysis for fresh apples from the Pacific Northwest states, and in October 2020, Australia published the draft risk analysis for a 90-day comment period. Australia also prohibits the importation of pears from the United States for phytosanitary issues, including fire blight.

INTELLECTUAL PROPERTY PROTECTION

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

Under the FTA, Australia must notify a pharmaceutical product patent owner of a request for marketing approval by a third party for a product claimed by that patent owner. 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. In October 2020, the Australian Government announced planned reforms to the notification procedures for pharmaceutical products that are under evaluation. These reforms, if fully implemented, could increase transparency and promote the early resolution of potential pharmaceutical patent disputes. These reforms require legislation to be passed and implemented; however, no legislation had been introduced in Australia's parliament as of March 2021. 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. The United States will continue to monitor these issues.

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. These local content requirements do not currently apply to cable or online programming.

Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend ten 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.

In September 2020, the Minister for Communications announced that the Australian Government will introduce changes to local content requirements. This will include legislation to reduce the Australian content spend requirements for subscription television channels to five percent, down from the current ten percent. Australia will also require streaming video services to report to the media regulator on Australian content acquisitions, beginning in 2021. The government indicated it will simultaneously investigate whether to introduce an Australian content obligation for streaming video-on-demand services above a minimum size threshold. In November 2020, the Australian Government issued the Media Reform Green Paper. The Green Paper proposes setting the "expectation" that subscription and advertising video-on-demand services invest a percentage of their Australian revenue in Australian content, in the form of commissions, co-productions, and acquisitions. If service suppliers fail to meet investment expenditure "expectations" for two consecutive years, then the Minister of Communications will have the power to implement regulatory requirements. The United States will continue to monitor this issue to ensure compliance with Australia's FTA obligations, which discipline measures that discriminate in favor of domestic content.

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. Digital-only commercial radio stations (*i.e.*, stations not also simulcast in analog) are exempt from the Australian music quota.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

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

Internet Services

Mandatory Bargaining Code of Conduct

On July 31, 2020, the Australian Competition and Consumer Commission released the Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 ("Bargaining Code") for consultations. Then, on December 10, 2020, the Australian Government introduced an updated draft Bargaining Code for parliamentary consideration. During the consultation process, the United States identified a number of concerns with the draft Bargaining Code and provided formal submissions to the ACCC in August 2020 and the Australian Parliament in January 2021. On February 25, 2021, the Australian Parliament passed an amended version of the legislation. The amended legislation appears to have addressed several of the concerns identified by U.S. stakeholders.

Under the Bargaining Code, designated platform services companies are required to engage in negotiations with registered Australian news media businesses to pay the news businesses for content accessed via certain services offered on the companies' digital platforms. The Bargaining Code specifies that the Australian Treasurer is responsible for designating platforms. When designating platforms, the Treasurer must consider whether the platform holds a significant bargaining power imbalance with Australian news media businesses. The Treasurer must also consider if the platform has made a significant contribution to the sustainability of the Australian news industry through agreements relating to news content of Australian news businesses. If negotiations break down, or an agreement is not reached within three months, the bargaining parties would be subject to compulsory mediation. If mediation is unsuccessful, the bargaining parties would proceed with arbitration, with arbitrators seeking to determine a fair exchange of value between the platforms and the news businesses. In addition to the negotiation and arbitration requirements, the Bargaining Code imposes information sharing requirements, including a requirement that platforms provide advance notice of forthcoming changes to algorithms if the change is likely to have a significant effect on the referral traffic for covered news content.

The United States will continue to monitor this issue to ensure that U.S. companies are treated in a manner that is fair and transparent and consistent with the FTA.

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. In addition, the Australian Government has announced

plans to introduce an Online Safety Act that would place additional responsibilities on digital platforms to monitor and remove harmful content posted on their services.

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 Cooperation and Development, noting overwhelming stakeholder support for this option.

INVESTMENT BARRIERS

Foreign direct investment into Australia is regulated by the Foreign Acquisitions and Takeovers Act 1975, as amended, and associated regulations, and is screened by the Foreign Investment Review Board (FIRB), a division of Australia's Treasury. Generally, foreign investors are required to apply to FIRB for acquisitions of a "substantial interest" in an Australian business valued above A$281 million (approximately $216 million). Decisions are based on the "national interest" test, which includes national security concerns. Additionally, foreign persons must get approval before acquiring residential land, regardless of the value. All investments, including greenfield investments, by foreign government investors must also get approval by FIRB, regardless of the value or industry of the business.

Under the FTA, all U.S. greenfield investments are exempt from having to apply to FIRB. Under the FTA, non-greenfield U.S. investments above a higher threshold value are required to apply to FIRB, which stands at A$1.216 billion (approximately $933 million) for non-sensitive businesses and A$281 million (approximately $216 million) for sensitive businesses. As with other investors, 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.

Any foreign acquisition of a "direct interest" in a "national security business" must be filed with FIRB regardless of its value. National security businesses include critical infrastructure; businesses that develop, manufacture, or supply critical goods or critical technology intended for use by the Australian military or intelligence community, or foreign militaries or intelligence communities; and businesses that provide critical services to Australia's military or intelligence community, including the storage of Australian classified information or personal information of Australian personnel. If such an investment is not otherwise subject to the broader national interest test, FIRB will apply a narrow national security test. The Treasurer also has the power, for up to 10 years after the investment, to "call in" any foreign investment not filed with FIRB if the Treasurer considers it may pose a national security concern.

In 2014, the New South Wales (NSW) government cancelled a company's license for an existing mining project, and passed legislation denying the investors in the project the opportunity to seek judicial review because of alleged corruption involving the original acquirer of the license. The U.S. Government has raised concerns that the NSW government denied U.S. investors the right to meaningful judicial review of their claims. In October 2019, the NSW's parliamentary legislative committee acknowledged that, irrespective of the alleged corruption, there are some innocent shareholders who acquired shares in good faith and without knowledge of the controversy and recommended the NSW government address the issue of compensation, where appropriate.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade surplus with Bahrain was $248 million in 2020, a 30.6 percent decrease ($109 million) over 2019. U.S. goods exports to Bahrain were $885 million, down 37.1 percent ($521 million) from the previous year. Corresponding U.S. imports from Bahrain were $638 million, down 39.3 percent. Bahrain was the United States' 77th largest goods export market in 2020.

U.S. exports of services to Bahrain were an estimated $735 million in 2019 and U.S. imports were $795 million. Sales of services in Bahrain by majority U.S.-owned affiliates were $320 million in 2018 (latest data available), while sales of services in the United States by majority Bahrain-owned firms were $1.5 billion.

U.S. foreign direct investment in Bahrain (stock) was $510 million in 2019, a 15.4 percent increase from 2018.

TRADE AGREEMENTS

The United States-Bahrain Free Trade Agreement

The United States-Bahrain Free Trade Agreement (FTA) entered into force on January 11, 2006. Under the FTA, as of January 1, 2016, Bahrain provides duty-free access to all U.S. exports. The United States and Bahrain meet to review implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). Bahrain implemented the tax in December 2017. U.S. beverage producers report that the current tax structure, which also applies to sugar-free carbonated beverages, 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. U.S. beverage producers report that in the period between the implementation of the excise taxes and the outbreak of the COVID-19 pandemic, they observed a 25 percent to 30 percent decline in sales.

In 2016, GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent. Bahrain completed implementation of the VAT in three phases, concluding December 31, 2019.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Degradable Plastics

In September 2018, Bahrain notified the World Trade Organization (WTO) of a new technical regulation on degradable plastic products. The regulation phased out single-use plastic bags and banned the import of

non-biodegradable plastic bags in July 2019. In July 2020, the regulation banned polyethylene and polypropylene sheets, such as table covers. Bahrain has stated that it will notify future changes in product coverage to the WTO.

Halal Regulations

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO Committee on Technical Barriers to Trade in October 2020.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

GOVERNMENT PROCUREMENT

The United States–Bahrain 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 issues with the tendering process related to GCC-funded projects.

Bahrain is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since December 2008.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

As part of its United States–Bahrain FTA obligations, Bahrain enacted several laws to improve protection and enforcement of copyrights, trademarks, and patents. 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.

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

BANGLADESH

TRADE SUMMARY

The U.S. goods trade deficit with Bangladesh was $4.2 billion in 2020, a 2.6 percent decrease ($111 million) over 2019. U.S. goods exports to Bangladesh were $1.8 billion, down 21.2 percent ($495 million) from the previous year. Corresponding U.S. imports from Bangladesh were $6.1 billion, down 9.1 percent. Bangladesh was the United States' 59th largest goods export market in 2020.

U.S. foreign direct investment in Bangladesh (stock) was $493 million in 2019, a 3.7 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Bangladesh Trade and Investment Framework Agreement

The United States and Bangladesh signed a Trade and Investment Cooperation Forum Agreement (TICFA) on November 25, 2013. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Bangladesh.

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, the "List of Controlled Goods" and the "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 percent for agricultural products and 13 percent for non-agricultural products in 2018 (latest data available). Bangladesh has bound only 7.916 percent of its tariff lines in the World Trade Organization (WTO), with an 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 duties 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). The National Board of Revenue (NBR) waived duties and VAT on the import of personal protective equipment and other emergency medical supplies in March 2020 in response to the COVID-19 pandemic.

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.

Non-Tariff Barriers

Quantitative Restrictions

Commercial importers and private industrial consumers (with the exception of those located in Export Processing Zones (EPZs)) must register with the Chief Controller of Imports and Exports in the Ministry of Commerce. The Chief Controller issues import registration certificates (IRC). An IRC is generally issued within one working day of receipt of the eligible 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

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 (LC). A LC 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 NBR, Bangladesh Bank (the country's central bank authority) has directed all dealer banks not to allow importers to establish a LC if the LC 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, certificate of origin, insurance policy/cover note and VAT/BIN certificate. 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 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 LC in excess of the maximum value of annual imports.

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

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

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 three counties in southern Texas along the border with Mexico (less than 0.5 percent of the U.S. cotton acreage). This requirement adds 58 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. In September 2020, APHIS and the U.S. Cotton Council hosted the Bangladeshi Secretary of Agriculture for a virtual tour of U.S. cotton production, ginning, baling, and shipping to address any outstanding concerns related to boll weevil. As recently as October 2020, 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. In 2020, Bangladesh was the fifth largest export market for U.S. cotton, with exports valued at $330 million.

SUBSIDIES

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, incentives are provided for a variety of products including vegetables, fruits, jute products, halal meat products, coconut coir, seeds of horticultural products, live crabs, frozen shrimp, prawns, and fish products. Subsidies are also given to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized

fertilizers, diesel, electricity, and agricultural machinery. 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. 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. U.S. companies have reported instances of alleged bid rigging in government tenders in Bangladesh. U.S. companies have also alleged the use of bribery, anti-competitive practices, and a lack of transparency in the bidding process, all of which is a disadvantage to U.S. companies bidding on government tenders.

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). While the Patents and Designs Act of 1911 remains in effect, two new laws to replace it are under consideration: Bangladesh Patents Bill 2021; and Bangladesh Industry-Designs Bill 2021. The Prime Minister's cabinet has approved these draft bills, but before becoming law they would need to undergo review by the Law Ministry and final approval by Parliament. In addition, the Department of Patents, Designs and Trademarks (DPDT) has drafted an "Innovation & IP Policy Strategy." However, Bangladesh failed to consult all relevant stakeholders and the policy lacks wide acceptance or support.

Bangladesh devotes limited resources to IP protection and enforcement. Counterfeit and pirated goods are readily available. 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.

Bangladesh took an encouraging step in November 2019 when its National Board of Revenue issued revised Customs Rules intended to streamline IP enforcement and prevent the importation of counterfeit products. In September 2020 in New Delhi, India, the U.S. Patent and Trademark Office (USPTO) hosted a three-day program for Bangladeshi Customs officials and industry representatives on U.S. IP enforcement and best practices.

Better coordination among enforcement authorities and other 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, 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.

ATM, point of sales, and Internet banking fund transfer transactions are being routed through the NPSB. However, Bangladesh Bank has postponed the implementation date for mandatory connection. In October 2020, Bangladesh Bank launched mobile finance services interoperability. Bangladesh Bank's 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, 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. The United States has continued to press Bangladesh Bank to reconsider this restriction, and in 2020 Bangladesh Bank formed a committee to assess the implementation of new rules to allow insurance distribution.

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 $423,000) as an annual licensing fee. A tax of BDT 200 (approximately $1.70) is imposed on the sale of subscriber identification model (SIM) cards, and a ten 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 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 (the Act), 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, Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. The BTRC ordered mobile operators to limit data transmissions for political reasons on several occasions in 2019 and in 2020 ahead of politically sensitive events, including local and national elections. The BTRC ordered mobile operators to block all services except for voice calls in the Rohingya refugee camps in Cox's Bazar from September 2019 until August 2020. In November 2018 the BTRC instructed all international Internet gateway licensees to temporarily block a U.S. Voice over IP service supplier; the block 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. U.S. and global social media platforms reported paying VAT to NBR beginning in July 2020.

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.

Bureaucratic inefficiencies also often discourage investment in Bangladesh. According to World Bank figures, Bangladesh's foreign direct investment as a percentage of GDP in 2019 (latest data available) was only 0.66 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 the procedures and requirements for outbound transfers from Bangladesh remain cumbersome and that applications to repatriate profits or dividends can be held up for additional information gathering or otherwise delayed. In June 2020, Bangladesh Bank announced that it would ease the requirements for repatriating the sales proceeds of nonresident equity investment in non-listed public limited companies and private limited companies. The Central Bank announced in July 2020 that it would enable local banks to transfer foreign investors' dividend income into their foreign currency bank accounts, and also relaxed its oversight of remittances of dividends by foreign shareholders, allowing banks and non-bank financial institutions to extend credit facilities to foreign companies in local currency against foreign guarantees. However, U.S. insurance companies report that agency-level regulators continue to present significant obstacles to securing required approvals for remittances, which are required before insurance companies can seek central bank clearance.

International companies, including U.S. companies, have raised concerns the NBR has arbitrarily reopened decades-old tax cases, particularly targeting 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 unit closely scrutinizes issues related to tax avoidance and capital flight. U.S. firms are concerned they will be targeted as the Bangladesh Government seeks to increase revenues.

ANTICOMPETITIVE PRACTICES

The Bangladesh Competition Commission (BCC) is an independent agency, but falls under the Ministry of Commerce. 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 the work of the BCC since 2011 and significant reforms in the domestic economy, Bangladesh still possesses a weak competition regime to address anticompetitive conduct. Although the BCC finally came into full 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

Corruption is a pervasive and longstanding problem in Bangladesh. Bribery and extortion in commercial dealings are common features of business. U.S. companies have complained about long delays in obtaining approval of licenses and bids, as compared to other players. While Bangladesh 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 Government Job Act made it mandatory for ACC to seek permission of the authorities concerned before arresting any government officer. The Government Job 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

During 2020, Bangladesh implemented 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 $71 million in 2020, a 27.3 percent decrease ($27 million) over 2019. U.S. goods exports to Bolivia were $451 million, down 18.4 percent ($101 million) from the previous year. Corresponding U.S. imports from Bolivia were $380 million, down 16.5 percent. Bolivia was the United States' 91st largest goods export market in 2020.

U.S. foreign direct investment in Bolivia (stock) was $556 million in 2019, a 14.4 percent increase from 2018.

IMPORT POLICIES

Bolivia's constitution, adopted in February 2009, establishes broad guidelines to give priority to local production. However, as of March 2021, 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 engineered (GE) products, though it requires labeling. Since January 2018, all GE 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 GE products from the Bolivian marketplace. However, implementing regulations have not yet been issued, due in part to objections from Bolivian industry, which has sought the reform of many import policies it considers onerous, including those related to biotechnology.

Tariffs

Bolivia's average Most-Favored-Nation (MFN) applied tariff rate was 11.8 percent in 2019 (latest data available). Bolivia's average MFN applied tariff rate was 13.2 percent for agricultural products and 11.6 percent for non-agricultural products in 2019 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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 certain capital goods (machinery and equipment) and 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 law allows the government to raise tariffs if necessary to protect domestic industry, or alternatively, to lower tariffs if supplies run short.

Non-Tariff Barriers

Import Licensing

Bolivia maintains a broad import licensing regime for more than 700 10-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 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 that 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 2020, 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, 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 in January 2018. Bolivia has not yet submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and (3) customs contact points for the exchange of information. Those notifications 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.

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" or rural farmer 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 occasionally makes 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, are 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 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. Bolivia's IP agency, Servicio Nacional de Propiedad Intelectual (SENAPI), signed a memorandum of understanding with the United States Patent and Trademark Office in 2020 to help address Bolivia's challenges.

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, though those protections will end in June 2022, 10 years after the termination of the treaty.

The Bolivian Government has 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 Bolivian Government also has used means other than nationalization to re-establish public sector control over the economy. In the past few years, the 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 expressed concern that these public companies engage in unfair subsidized competition leading to a state-driven economic system.

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

With respect to hydrocarbon resources, Article 359 of the 2009 constitution stipulates that all hydrocarbon deposits, regardless of 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. Article 359 of the 2009 constitution 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.

With respect to the broader mining 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. Also, priority is 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 $11.7 billion in 2020, a 2.3 percent decrease ($274 million) over 2019. U.S. goods exports to Brazil were $35.0 billion, down 18.2 percent ($7.8 billion) from the previous year. Corresponding U.S. imports from Brazil were $23.3 billion, down 24.4 percent. Brazil was the United States' 9th largest goods export market in 2020.

U.S. exports of services to Brazil were an estimated $24.6 billion in 2019 and U.S. imports were $6.8 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $40.1 billion in 2018 (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 in Brazil (stock) was $81.7 billion in 2019, a 3.4 percent increase from 2018. U.S. direct investment in Brazil is led by manufacturing, finance and insurance, and mining.

TRADE AGREEMENTS

The United States–Brazil Agreement on Trade and Economic Cooperation

The United States and Brazil signed the Agreement on Trade and Economic Cooperation (ATEC) on March 19, 2011. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Brazil.

On October 19, 2020, the United States and Brazil updated the ATEC with a new Protocol on Trade Rules and Transparency. The new Protocol includes state-of-the-art provisions on Trade Facilitation and Customs Administration, Good Regulatory Practices, and Anti-Corruption. Once implemented, the Protocol will reduce red tape in Brazil and improve regulatory processes, as well as serve as a foundation for future bilateral engagement.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Brazil's average Most-Favored-Nation (MFN) applied tariff rate was 13.4 percent in 2019 (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 2019 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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.

Brazil is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 that also comprises Argentina, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 12.5 percent.

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list 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 MERCOSUR website. 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.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a 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 March 2021, only Argentina had done so. On September 10, 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. Brazil has not yet completed this step.

Given the large disparities between Brazil's WTO bound and its 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), possibly as a means of protecting domestic industries from import competition and managing prices and supply. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

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

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. More than 20 years after making this commitment, Brazil enacted Resolution 10 on November 12, 2019, which implemented this 750,000 MT annual TRQ for wheat imports. Under this resolution, the duty free quota applies to importations from countries that do not already have a trade agreement that provides duty-free access for wheat, including Brazil's MERCOSUR trade partners. The measure resulted in significant increases of U.S. wheat exports to Brazil in 2020. In an effort to control food price inflation, the TRQ was expanded in 2020 to allow additional imports through November 2021. However, Brazil's Economy Ministry implemented the TRQ as a temporary exception to MERCOSUR's common external tariff of ten percent on wheat imports, resulting in uncertainty for U.S. exporters.

Ethanol Tariff-Rate Quota

Between 2011 and 2017, bilateral trade of ethanol between the United States and Brazil, the world's two largest producers and consumers of ethanol, was virtually duty-free. (Ethanol imports into the United States enter at the MFN rate of 1.9 percent or 2.5 percent, depending on HS code, while imports into Brazil entered duty-free). However, in September 2017, Brazil implemented a 24-month TRQ on ethanol imports, whereby imports above 600 million liters per year, distributed evenly each quarter, were subject to a 20 percent tariff (in-quota imports continued to enter duty free). On August 31, 2019, when the two-year TRQ was set to expire, Brazil's Economy Ministry established a new 12-month TRQ. The new TRQ limited duty-free imports to 750 million liters of ethanol (a 25 percent increase from the 2017 TRQ), while retaining the 20 percent tariff for out-of-quota imports and imposing seasonal restrictions by limiting the duty-free volumes to 100 million liters in the last quarter of the calendar year and first quarter of the following year. Although the tariff was below Brazil's WTO bound tariff rate of 35 percent, the TRQ limited the otherwise

robust bilateral trade in ethanol. Following the expiration of the TRQ in August 2020, Brazil's Economy Ministry established a 90-day, pro-rated TRQ extension of 187.5 million liters on September 14, 2020. The pro-rated TRQ extension expired on December 15, 2020, and has not been renewed. Since then, all imports of ethanol into Brazil are subject to the MERCOSUR CET of 20 percent. 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.

Brazil imposes a 25 percent *ad valorem* Industrial Product Tax (IPI) on cachaça, a domestic distinctive product produced from sugarcane, while imposing a 30 percent *ad valorem* IPI on other alcoholic beverages, including imports of Tennessee Whiskey, bourbon, gin, and vodka from the United States.

Non-Tariff Barriers

Import Bans

Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology (ICT) 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 circumstances. For example, certain antiques, cultural objects, inherited items, materials entering Brazil temporarily, and items with no commercial value may be approved for import. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically, or if they meet certain other limited exceptions.

Import Licensing

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

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as agricultural commodities and beverages (Ministry of Agriculture, Livestock, and Supply – 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 in the import licensing process, but sustainable reforms in line with international best practices will be necessary to improve processing and fully automate data exchange. SECEX has initiated a consolidation of import licensing processing by implementation of a new module on SISCOMEX called LPCO (Licenses, Permissions, Certificates, and Other Documents), which will eventually replace

individual import licenses. LPCO will centralize all information and documentation necessary for import licensing, thereby eliminating requirements to register with other ministries for permission to import certain products. LPCO has been implemented on exports, but currently, only certain agricultural commodities have been included in this new process for imports.

U.S. footwear and apparel companies have expressed concern about 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 ratified the WTO Trade Facilitation Agreement (TFA) on April 3, 2018. Brazil's notifications to the WTO indicated that it would complete implementation by the end of 2019. However, additional customs modernization in Brazil, including through implementation of the Protocol to the ATEC signed in 2020, would significantly improve the movement of goods. U.S. companies continue to complain of burdensome and inconsistent documentation requirements for the importation of certain types of goods, such as heavy equipment, that apply even if imports are on a temporary basis and are destined for use in other countries. Brazil has made strides in improving its trade facilitation environment by implementing ATA Carnet, to facilitate temporary admission of goods, and by 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

On August 6, 2020, INMETRO issued Ordinance 258, which updates its product registration approach for all products. It allows INMETRO to issue the registration number upon receipt of simplified documentation from the manufacturer. The manufacturer will be able to market the product 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 will be fined and might have the registration suspended or cancelled.

Telecommunications

Pursuant to Resolution 715 of April 2020, the Brazilian National Telecommunications Agency (ANATEL) implements testing requirements for telecommunication products and equipment. 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. Through subsequent implementing acts, ANATEL has reduced the frequency of testing requirements and introduced the use of a declaration of conformity with test results procedures for certain products, based on a risk analysis. ANATEL has also introduced an option for e-labelling. However, additional implementing acts

have yet to be published, so not all reforms are in effect. In addition, ANATEL still requires domestic testing for many products.

Conformity Assessment Toys

INMETRO issued Ordinance 563/2017, scheduled to take effect on January 1, 2022, which provides for testing and conformity assessment requirements for toys and consolidates previous toy regulations. Under previous regulations, toy manufacturers were required to register manufacturing facilities. Ordinance 563 additionally requires the registration of each toy as part of a family of products. Product labels have to bear a separate registration number for each product family, which must be obtained through a new Object Registration system prior to importation. The application of the Object Registration system to toys increased the complexity of the existing certification system, created delays in importing toys, and increased costs for importers and Brazilian consumers.

Certificate of Analysis - Wine

On December 31, 2019, Brazil issued Regulation No. 75, "Consolidated Regulations for Beverages, Vinegars, Wines, and Wine and Grape Byproducts." The regulation requires new analytical certification in both the exporting country and in Brazil. The new regulation requires both a Certificate of Analysis and an Import Inspection Pre-Certification Report (generated by a Brazilian lab upon importation), additional analyses beyond those required in the Certificate of Analysis. Regulation No. 75 reduced the analytical requirements in the Certificate of Analysis from 15 to 7. However, the new requirements include analysis related to methanol content, which is burdensome and cost prohibitive for exporters. The United States has raised concerns with the certificate of analysis on the margins of all three WTO TBT Committee meetings in 2020.

Sanitary and Phytosanitary Barriers

Beef

U.S. firms have reported problems with access to Brazil for imports of U.S. beef, due to Brazil's request to renegotiate certificate requirements that had previously been agreed to bilaterally in 2016. Brazil will accept the existing certificate, but only through March 31, 2021. The United States continues to press Brazil to allow the use of the previously agreed-upon certificate without additional restrictions.

Pork

U.S. fresh, frozen, and further processed pork products are ineligible for export to Brazil due to issues related to regionalization for the control of certain animal diseases. In a Joint Statement on March 19, 2019, the United States and Brazil agreed to establish 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 and MAPA are progressing, but have yet to establish conditions for U.S. access to the Brazilian market.

SUBSIDIES

The Greater Brazil Plan industrial policy, established by Law 12546 in 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 more than 50 percent of their output. Similarly, the Reintegra program, launched in 2011 as part of Greater Brazil Plan, exempts exports of goods covered by more than 8,000 tariff lines from certain taxes, and allows Brazilian exporters to

receive up to 0.1 percent of gross receipts from exports in tax refunds. The Reintegra program has been amended several times, most recently in May 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 supplied by companies that commit to export software and information technology services if 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 PIS and Contribution for the Financing of Social Security (COFINS) 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.

In 2018, Brazil established the Rota 2030 incentive program for the automotive sector. The program provides tax incentives for manufacturers that 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$1.5 million (approximately $294 million) in tax credits per year, if the automobile industry invests at least R$5 billion (approximately $980 million) in research and development. The program does not apply to automobile importers. The law provides these benefits for a period of five years, but there are plans to extend the program for an additional 10 years. Brazil created Rota 2030 as a replacement for INOVA-AUTO, a program that a WTO dispute settlement panel and the Appellate Body found in 2017 and 2018 to be inconsistent with Brazil's WTO obligations.

Brazil provides tax reductions and exemptions on many domestically produced ICT and digital goods that qualify for status under the Basic Production Process (PPB) through the Law on Computing Technology. The PPB is product-specific and stipulates which stages of the manufacturing process must be carried out in Brazil in order for a product to be considered produced in Brazil.

Under the Special Regime for the Development of the Fertilizer Industry, fertilizer producers receive tax benefits, including an exemption from the IPI tax on imported inputs, provided they comply with minimum local content requirements and can demonstrate investment in local research and development projects.

Normative Instruction 1.901 of July 2019 provides for tax benefits for the local manufacture of goods for the oil and gas industry, called Repetro-Industrialização. This special regime is part of a larger initiative for the oil and gas industry, called REPETRO-Sped. Under Repetro-Industrialização, local producers can purchase or import raw materials with an import tax exemption. The measure aims to increase domestic producers' competitiveness vis-a-vis imported machinery and equipment, which receive benefits under REPETRO-Sped.

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 or above 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 Brazilian 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 (latest data available), approximately 44 million metric tons (MMT) of commodities received assistance under PEPRO at a cost of approximately $2.32 billion. Most of that assistance was for cotton, corn, soybeans, and wheat. In 2017, PEPRO payments of 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 $1.7 billion. Corn and wheat received the vast majority of this assistance. In 2017, PEP payments of 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 approximately $2.43 million, and PEP supported 390,176 MT, totaling 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 (GPA), but has been an observer to the WTO Committee on Government Procurement since October 2017.

On May 18, 2020 Brazil submitted its application for accession to the WTO GPA and in October 2020, it submitted to the WTO GPA Committee its Replies to the Checklist of Issues as part of the accession process.

In an effort to align with the WTO GPA obligations, in October 2017 the Government of Brazil adopted Normative Instruction 10, which facilitated the participation of foreign companies in government procurement tenders without the establishment of legal representation in Brazil or the requirement to provide sworn translations of incorporation documents (although these documents are required if a company is awarded a contract).

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 serving as subcontractors to 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. U.S. technology companies have concerns regarding the potentially prohibitive costs of certifying a system for an individual market.

The Brazilian National Oil and Gas Regulatory Agency (ANP) maintains minimum LCRs for all oil companies operating in Brazil's upstream exploration and production phases, including procurement for stated-controlled companies such as 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 each block the LCRs differ for equipment, workforce, and services. Brazil reformed the LCRs for Brazil's critical oil and gas sector in 2017. 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. On January 31, 2020, ANP issued Resolution 809, allowing the certification of imported final products or services for the oil and gas sector if domestic components or services are incorporated into production.

INTELLECTUAL PROPERTY PROTECTION

Brazil remained on the Watch List in the Special 301 Report. Brazil is an increasingly important market for intellectual property- (IP) intensive industries; however, administrative and enforcement challenges continue, including high levels of counterfeiting and piracy online and in physical markets. Increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay, and stronger deterrent penalties, are critical to make sustained progress on these IP concerns. The National Council on Combating Piracy and Intellectual Property Crimes 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 further reduction in application backlogs for patents, trademarks, and industrial designs, an upgrade of the agency's information technology systems, and the digitization of patent applications. The decrease in examination times for trademark applications put Brazil in line with Madrid Protocol standards, and Brazil started receiving trademark applications through the Madrid Protocol system in October 2019, following its accession to the agreement. However, patent delays remain a concern. In July 2019, INPI implemented a plan to reduce the backlog by 80 percent by July 2021 and made progress toward that goal during 2020. In December 2019, INPI and the U.S. Patent and Trademark Office put into place an updated Patent Prosecution Highway program that is technology neutral (that is, not limited by sector or type of patent). 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.

In addition, the United States encourages Brazil to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

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 for human use. The United States also remains concerned about INPI's actions to invalidate or shorten the term of a 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) tax, is waived if the distributor agrees to invest an amount equal to three percent of the total remittances in local independent productions. Remittances for video on demand 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.

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

Law 12.485 of 2011 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 law 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 has been 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, cleared the merger in 2017 under Brazil's antitrust laws, and ANATEL approved the merger in February 2020. Brazil's congress is evaluating proposals to update the Pay TV law to clarify that it would not prohibit such mergers. The potential updated measure, PL 3832, was introduced in July 2019 but has not been approved.

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 considering whether to raise its *de minimis* threshold.

The Brazilian Government charges a flat 60 percent duty for all express shipments 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 the establishment of branches 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. Decree 10.029 of September 2019 grants the Brazilian Central Bank authority to approve entry of foreign financial institutions into Brazil, and 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 and Poor's or Fitch ratings of at least BBB-. Under CNSP Resolution No. 322 of 2015 the preferential offers to local reinsurers of at least 40 percent were gradually decreased to 15 percent as of January 1, 2020.

Telecommunications Services

Law 13.879 of October 2019, known as Projecto de Lei de Camara (PLC) 79, updated 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 only 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). In June 2020, ANATEL initiated a public bid to hire a consulting company to assess the costs of migrating to the authorization model, which is expected to be finalized by the end of 2021.

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 are 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 2018, ANATEL held a public consultation to review barriers to M2M and IoT, and despite public comments in support of allowing permanent roaming, ANATEL held that such arrangements remain illegal in Brazil. This interpretation is at odds with those of 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

The General Law for the Protection of Personal Data (LGPD) of 2018 generally applies to the processing of the personal data of data subjects in Brazil by people or entities, regardless of the means, the country where the data is located, or the headquarters of the entity. The Government of Brazil 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 LGPD entered into force on August 26, 2020, and on October 21, 2020, Brazil's Senate approved five directors nominated by the Brazilian president to head the DPA. The Brazilian Presidency has until August 2022 to review the DPA structure, during which time it may convert the DPA into an independent public authority. The DPA will also be responsible for oversight and, starting in August 2021, will be authorized to impose sanctions of up to R$50 million (approximately $9 million) per infringement. 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.

Digital Taxation

Brazil is considering the adoption of several unilateral digital services tax proposals. On June 2, 2020, the United States initiated a Section 301 investigation into digital services tax proposals under consideration by Brazil.

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. Draft Law 2963/2019 was submitted in the Senate and has been approved by two commissions (Economic Affairs Commission and Agriculture and Land Reform Commission); however, it has been pending approval in the Constitution, Justice and Citizenship Commission (CCJ) since March 2020.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade surplus with Brunei was $36 million in 2020, a 85.4 percent decrease ($211 million) over 2019. U.S. goods exports to Brunei were $119 million, down 58.7 percent ($169 million) from the previous year. Corresponding U.S. imports from Brunei were $83 million, up 100.6 percent. Brunei was the United States' 136th largest goods export market in 2020.

U.S. exports of services to Brunei were an estimated $68 million in 2019 and U.S. imports were $14 million. Sales of services in Brunei by majority U.S.-owned affiliates were $136 million in 2018 (latest data available). There were no sales of services in the United States by majority Brunei-owned firms in 2018.

U.S. foreign direct investment in Brunei (stock) was $15 million in 2019, unchanged from 2018.

TRADE AGREEMENTS

The United States–Brunei Trade and Investment Framework Agreement

The United States and Brunei signed a Trade and Investment Framework Agreement on December 16, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Brunei.

IMPORT POLICIES

Tariffs

Brunei's average Most-Favored-Nation (MFN) applied tariff rate was 0.3 percent in 2019 (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 2019 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.5 percent. Brunei's highest WTO bound tariff rate is for tobacco and is more than 1,000 percent; the highest WTO bound tariff rate for non-tobacco products is 50 percent.

Non-Tariff 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 products containing alcohol (*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 four transparency notifications related to: (1) import, export, and transit regulations (Article 1.4); (2) the 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 (Article 12.2.2). These notifications were due to the WTO on February 22, 2017, according to Brunei's self-designated TFA implementation schedule. Brunei's online publication of the details of its advance ruling system is not clear or easily accessible, making it difficult for traders to understand Brunei's system and how to apply for a ruling.

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 $360,000) 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 work remains to enforce 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.

In 2019, the Ministry of Home Affairs announced plans to impose new limits on the number of foreign workers employed in eight sectors: construction; retail and wholesale; education; transportation and storage; accommodation and food services; manufacturing, administration; and professional, scientific; and technical services.

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 of 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 it has granted none to date.

Transparency

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

BURMA

NOTE: *On February 1, 2021, the Burmese military overthrew the country's democratically-elected government. This chapter of the National Trade Estimate Report reports on the significant trade and investment barriers in Burma before that date. Post-coup policies related to these significant barriers may be uncertain or subject to unpredictable changes.*

TRADE SUMMARY

The U.S. goods trade deficit with Burma was $689 million in 2020, a 45.4 percent increase ($215 million) over 2019. U.S. goods exports to Burma were $338 million, down 2.4 percent ($8 million) from the previous year. Corresponding U.S. imports from Burma were $1.0 billion, up 25.2 percent. Burma was the United States' 100th largest goods export market in 2020.

TRADE AGREEMENTS

The United States–Burma Trade and Investment Framework Agreement

The United States and Burma signed a Trade and Investment Framework Agreement on May 21, 2013.

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 18.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 82.8 percent.

Non-Tariff Barriers

Import Bans

The Ministry of Commerce (MOC) maintains a list of prohibited imports; within the Ministry, the Department of Trade oversees amendments to the list. The government publishes the list in trade bulletins and publications but makes changes with no advance notice. The current list includes narcotic drugs, beer, playing cards, drones, arms and ammunition, antiques and archeologically valuable items, and items featuring images of the Buddha, Burma's pagodas, and the flag of Burma. On May 25, 2020, the MOC issued Notification 38/2020, allowing the importation of alcohol by a Burmese company incorporated in accordance with the Companies Law if it meets the criteria stated in the notification. Prior to 2015, the importation of all foreign liquor, which the government defines as including beer, wine and alcohol, was prohibited. The ban on the importation of foreign wine was lifted in 2015, leaving beer as the remaining banned liquor import in accordance with Notification 38/2020.

Import Licensing

Burma requires import licenses to trade in a wide range of products. The MOC issued Notification 68/2020 on October 22, 2020, which amended Burma's Import Negative List and reduced the number of items requiring import licenses to 3,931 HS 10-digit tariff items.

Burma continues to manage imports of agricultural products through an import licensing process that is unpredictable, nontransparent, and varies by product. In November 2019, the MOC clarified its import permit policy, which facilitated trade to some degree. This arrangement, however, appears to protect domestic producers, especially of sensitive products, through limiting or blocking market access for many agricultural products, including U.S. exports of poultry, fresh potatoes, soybean meal, and soybeans.

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, including 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 biotechnology. In 2020, Burmese regulators finalized a National Biosafety Framework to manage the importation, development, field testing, and environmental impacts of agricultural biotechnology in a way that protects human health and biodiversity and supports biotechnology development. The importation of agricultural biotechnology food is not explicitly prohibited by any current legislation, although some Burmese Government officials have stated otherwise. Agricultural biotechnology products, such as soybean meal and distiller's dried grains with solubles, enter freely without restrictions.

SANITARY AND PHYTOSANITARY BARRIERS

Burma's Food and Drug Administration requires that each shipment of imported food and beverage products undergoes microbiological, chemical, and heavy metal testing in the country of origin without regard to whether there is an identified risk of contamination associated with particular shipments. The United States will continue to monitor Burma's development of a new comprehensive food law that would consolidate and replace existing laws.

GOVERNMENT PROCUREMENT

Burma issued 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 $7,769). The Ministry of Planning, Finance and Industry drafted and submitted to Parliament in 2020 a broad Procurement Law, which has not yet been ratified.

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 intellectual property (IP) legislation, the government established a central intellectual property committee chaired by the Vice President and a new Department of IP to administer the laws. On October 1, 2020, the government began accepting preliminary trademark applications by applicants with previously registered trademarks in

Burma. Other applications will be accepted once the Trademark Law comes into effect, reportedly by mid-2021. At the official opening date, applications are to be reviewed on a first-to-file basis. The United States will continue to monitor the implementation of these new laws and regulations.

While the Burmese Government has taken positive steps to improve IP enforcement, including establishing the Central Committee for Intellectual Property to provide guidance to law enforcement and other government agencies, the United States has received reports of increasing sales of counterfeit goods and growing online piracy.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $6.2 billion in 2020, a 28.7 percent increase ($1.4 billion) over 2019. U.S. goods exports to Cambodia were $344 million, down 33.1 percent ($170 million) from the previous year. Corresponding U.S. imports from Cambodia were $6.6 billion, up 22.8 percent. Cambodia was the United States' 99th largest goods export market in 2020.

U.S. foreign direct investment in Cambodia (stock) was $187 million in 2018 (latest data available).

TRADE AGREEMENTS

The United States–Cambodia Trade and Investment Framework Agreement

The United States and Cambodia signed a Trade and Investment Framework Agreement (TIFA) on July 14, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Cambodia.

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 an average WTO bound tariff rate of 19.3 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.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Both local and foreign businesses have raised concerns that the Cambodian 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. Importers have also cited customs delays for goods coming into Cambodia's lone deep-water port in Sihanoukville, and being asked to pay "unofficial" fees to expedite shipments into and out of the port.

SUBSIDIES

Cambodia has not submitted any subsidies notifications since its accession to the WTO in 2004. The most recent WTO Trade Policy Review (TPR) in late 2017 indicated various subsidies programs that benefit production and exports. The United States submitted questions to Cambodia through the WTO Committee on Subsidies and Countervailing Measures regarding tax and duty incentives under Cambodia's Qualified

Investment Projects initiative and other incentives available in Special Economic Zones. Some of these incentives appear to be contingent on exportation. The United States will continue to urge Cambodia to submit notifications of its programs under the WTO Agreement on Subsidies and Countervailing Measures.

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. The criteria of each method include 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 only 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 March 2021, U.S. stakeholders had 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

Despite efforts to raise intellectual property (IP) awareness, the sale of counterfeit and pirated goods remains commonplace in Cambodian markets. Central Market in Phnom Penh continues to be included in the Notorious Markets List. 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 Crime 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, the Ministry of Culture and Fine Arts, and the Ministry of Commerce. The division of responsibility among these disparate institutions is not clearly defined. In an effort to combat counterfeiting, the Cambodia Counter Counterfeit Committee (CCCC), which is under the Ministry of the Interior, serves as an umbrella agency for 14 organizations. 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 transferees and licensees can apply to the Ministry of Commerce's Department of Intellectual Property Rights to have their commercial relationship recognized as an exclusive dealership.

In January 2020, the Ministry of Commerce issued a regulation (Prakas No. 036) on the Recordal of Trademark Licensing Agreements and Franchising Agreements that allows transferees and licensees to pursue action against third parties for trademark infringement.

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, Science, Technology, and Innovation (MISTI). MISTI'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. Cambodia ratified the Berne Convention for the Protection of Literary and Artistic Works in June 2020.

The United States Patent and Trademark Office and Cambodia's MISTI signed a Memorandum of Understanding in October 2020 on patent validation, which will expedite the process by which U.S. patents are recognized and registered in Cambodia.

The United States continues to meet with Cambodia under the TIFA and in other fora 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 that received approvals in 2010 and 2011 may use land through concessions and renewable leases, the Cambodian Government in 2012 imposed a moratorium on Economic Land Concessions (ELCs), which allowed long-term leases of state-owned land. The Cambodian Government reportedly also has reviewed and revoked previously granted ELCs on the grounds that the recipients had not complied with the ELC terms and conditions. As of March 2021, there were 229 active ELC projects covering 1.1 million hectares within the country, though land rights activists have asserted the figure is much higher. It is estimated that 40 percent of ELCs generate government revenue. In 2019, ELC-generated revenue topped $3 million, according to Cambodian Government figures.

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 the new tax code to a subjective application of taxes that could favor local industry over international investors.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Cambodia passed an electronic commerce law in late 2019 that governs the conduct of electronic commerce within Cambodia and from overseas. Cambodia's National Assembly passed a sub-decree in February 2021 that establishes a National Internet Gateway that would require internet providers to route all online traffic through a single node, which is expected to be implemented within one year, despite concerns

expressed by both the private sector and rights. Separate laws governing cybersecurity and cybercrime are in draft form.

OTHER BARRIERS

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 2020. 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.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $15.0 billion in 2020, a 44.1 percent decrease ($11.8 billion) over 2019. U.S. goods exports to Canada were $255.4 billion, down 12.7 percent ($37.2 billion) from the previous year. Corresponding U.S. imports from Canada were $270.4 billion, down 15.4 percent. Canada was the United States' largest goods export market in 2020.

U.S. exports of services to Canada were an estimated $67.7 billion in 2019 and U.S. imports were $38.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were $132.7 billion in 2018 (latest data available), while sales of services in the United States by majority Canada-owned firms were $133.3 billion.

U.S. foreign direct investment in Canada (stock) was $402.3 billion in 2019, a 9.2 percent increase from 2018. U.S. direct investment in Canada is led by nonbank holding companies, manufacturing, and finance and insurance.

TRADE AGREEMENTS

The United States–Mexico–Canada Agreement

On January 29, 2020, the President signed legislation implementing the United States–Mexico–Canada Agreement (USMCA). The USMCA entered into force July 1, 2020, modernizing and replacing the North American Free Trade Agreement (NAFTA). The USMCA maintains the zero tariffs among the three countries that were in place under the NAFTA.

The USMCA is a mutually beneficial win for North American farmers, ranchers, businesses, and workers that will support high-paying jobs for Americans and help grow the U.S. economy. It modernizes and rebalances U.S. trade relations with Canada and Mexico to benefit American workers and businesses, including by providing strong, enforceable labor and environmental obligations in the core text of the Agreement. The USMCA upgrades the NAFTA in a number of key areas, including by expanding U.S. access in Canada for certain U.S. dairy, poultry, and egg products, and by establishing some of the strongest and most advanced provisions on intellectual property rights (IP) and digital trade ever included in a trade agreement. Finally, it also includes a number of ground-breaking provisions to combat non-market practices that have the potential to disadvantage U.S. workers and businesses, such as currency manipulation and the provision of subsidies to state-owned enterprises.

The USMCA contains provisions designed to address several longstanding trade-related irritants with Canada. For example, it includes obligations to strengthen enforcement against counterfeiting and piracy, satellite and cable signal theft, transparency with respect to new geographical indications (GIs), 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 and discriminatory grading of U.S. wheat.

IMPORT POLICIES

Non-Tariff 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 through 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 for 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. Canada and the United States also agreed to strong rules to ensure TRQs are administered fairly and transparently to help ensure exporters benefit from the full market access negotiated in the USMCA.

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. prices 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), with discount pricing for a wide range of Canadian dairy ingredients used in dairy products, to decrease imports of U.S. milk protein substances into Canada and increase Canadian exports of skim milk powder into third country markets. Provincial milk marketing boards (agencies of Canada's provincial governments) began implementing Class 7 in February 2017.

The United States has raised its serious concerns about Class 7 with Canada bilaterally and at the World Trade Organization (WTO) Committee on Agriculture. Under the USMCA, Canada is obligated to eliminate Class 7 within six months of entry into force. In addition, Canada is obligated to 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 necessary to monitor compliance with these commitments. Canada is obligated to apply charges to exports of skim milk powder, milk protein concentrates, and infant formula in excess of thresholds specified in the USMCA.

Ministerial Exemptions

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

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

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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Cheese Compositional Standards

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

Front-of-Package Labeling on Prepackaged Foods

In 2020, the United States continued to monitor any progress regarding Canada's proposed regulation to implement requirements for front-of-package (FOP) labeling on prepackaged foods deemed high in sodium, sugars, and saturated fat, and updating requirements for other FOP information, including certain claims and labeling of sweeteners. The approach under consideration uses Canada's nutrient content claim framework to determine whether a food would be required to carry a FOP symbol, including a nutrient content message. The United States submitted comprehensive comments on the proposed regulations notified to the WTO in April 2018. Since then, the United States has regularly consulted with Canada regarding its plans to produce an updated draft or final regulation. In 2020, U.S. exports of processed foods to Canada were valued at approximately $12 billion.

Corded Window Coverings Regulation

On May 1, 2019, Health Canada published the new Corded Window Coverings Regulation, which is intended to help eliminate the strangulation hazard and to help reduce the rate of fatal strangulations associated with all corded window coverings, by specifying requirements for construction, performance, and labelling of window coverings. The proposed regulation raises industry concerns, as it creates unique national requirements, no longer aligns with the American National Standards Institute (ANSI) accredited standard, and creates national differences for regularly-traded products across the border. The proposed regulation was notified to the WTO on August, 2017, and the United States has engaged bilaterally with Canada on the development of this regulation, including in 2020, with requests to delay implementation of the measure. The new corded window coverings regulation comes into force on May 1, 2021. In October 2020, Canada announced that from May 1, 2021, to April 30, 2022, Health Canada intends to prioritize promoting awareness of and compliance with the Corded Window Covering Regulation, while also monitoring progress towards compliance. Then, beginning May 1, 2022, Health Canada intends to increase its compliance monitoring activities and take appropriate enforcement actions.

Proposed Integrated Management Approach to Plastic Products

In June 2019, Canada signaled its intent to reduce plastic waste by banning certain single-use plastics. Canada then announced in a October 2020 discussion paper, entitled *A Proposed Integrated Management Approach to Plastic Products to Prevent Waste and Pollution*, that its proposed ban will include plastic checkout bags, straws, stir sticks, six-pack rings, cutlery, and food ware made from hard-to-recycle plastics. Canada's plan to manage plastics also proposes improvements to recover and recycle plastic and establish recycled content requirements in products and packaging. Canada also published a proposed Order on October 10, 2020 to add "plastic manufactured items" to Schedule 1 ("the Toxic Substances List") of the Canadian Environmental Protection Act (CEPA). Such a designation would provide the Canadian Government with the regulatory authority to manage plastic production, importation, and use. The United States commented on the discussion paper and the proposed Order on December 9, 2020, and requested any implementing measures be notified to the WTO. The United States will continue to engage with Canada on these issues and will closely monitor their impact.

Sanitary and Phytosanitary Barriers

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 and cumbersome, and disadvantages U.S. seed and grain exports to Canada. Under the Canada Grain Act, only grain of varieties produced from seed of varieties registered under the Seeds Act may receive a grade higher than the lowest grade allowable in each class. 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.

GOVERNMENT PROCUREMENT

On July 23, 2019, the Government of Canada released the official Request for Proposal (RFP) for its Future Fighter Capability Project. 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 United States continues 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 remained on the Watch List in the Special 301 Report. As noted in the Special 301 Report, the most significant step forward Canada has made is its agreement to important IP provisions in the USMCA. Canada's commitments under the USMCA will significantly improve Canada's IP environment, addressing areas of longstanding concern, including enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new 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 European Union 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, the patent and pricing environments for innovative pharmaceuticals, and deficient copyright protection.

Pharmaceuticals

Regulatory changes to Canada's Patented Medicine Prices Review Board were announced on August 9, 2019. Canada informed stakeholders of its decision to delay the implementation of these regulations to July 1, 2021. The United States believes each country should appropriately recognize the value of patented pharmaceutical products and medical devices and should ensure 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 United States is monitoring Canada's implementation of USMCA commitments to allow for the cross-border supply of U.S. home-shopping programming.

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.

The CRTC's Wholesale Code entered into force in January 2016 and governs certain commercial arrangements between distributors (*e.g.*, cable companies) and programmers (*e.g.*, channel owners). 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 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.

Digital Media

In 2017, Canada launched its Creative Canada initiative, which states that the Canadian 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 allows 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. The Canadian Government's September 23, 2020 Speech from the Throne signaled its intent to move forward with provisions requiring "web giants" to contribute to the creation, production, and distribution of Canadian content. Canada continues to explore provisions that could force tech companies to compensate Canadian news publishers for displaying and linking to their content. The United States will closely monitor whether any new obligations on tech companies or foreign streaming providers are compliant with Canada's international trade obligations.

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 measures into conformity with the USMCA data provisions. The Canadian Government noted in its "Canadian Statement on Implementation" online publication that the Department of Finance, the Office of the Superintendent of Financial Institutions, and the Canada Deposit Insurance Corporation will work during the one-year transition period to develop the necessary regulations to ensure compliance with respect to eligible foreign financial institutions that elect to store their records outside of Canada.

Telecommunications Services

Canada maintains a 46.7 percent limit on foreign ownership of certain existing suppliers of facilities-based telecommunication services, including the cable television industry, a major competitor for Internet access services. In 2012, Canada made a small change to this regime by allowing foreign investment of more than 46.7 percent in suppliers with less than 10 percent market share. 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

On November 17, 2020, Canada introduced the Digital Charter Implementation Act of 2020, that, if adopted by Parliament, would repeal parts of the Personal Information Protection and Electronic Documents Act (PIPEDA), and enact a new Consumer Privacy Protection Act and a new Personal Information and Data Protection Tribunal Act (PIDPTA). In addition, the Province of Quebec introduced draft privacy legislation Bill 64 in June 2020 that would only permit public and private sector entities (with limited exceptions) to transmit personal data outside of the province to jurisdictions with a level of protection equivalent to Quebec's privacy law. The United States has urged Canada to ensure that these (and any other) legislative proposals do not place restrictions on the cross-border transfer of data that would conflict with the obligations set forth in USMCA, and will continue to monitor proposals and measures in effect at both the federal and provincial levels to ensure that cross-border transfer of data are not restricted in a manner inconsistent with Canada's trade obligations.

Digital Taxation

The Canadian Government continues to explore imposing a tax on revenues of companies 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.

INVESTMENT BARRIERS

The Investment Canada Act has regulated foreign investment in Canada since 1985. Foreign investors must notify the Canadian Government 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, which now includes the USMCA. These thresholds are adjusted annually. The thresholds for 2021 are C$415 million (approximately $305 million) for SOE WTO investments, C$1.043 billion (approximately $766.5 million) for private sector WTO investments and C$1.565 billion (approximately $1.15 billion) for private sector trade agreement investments.

CHILE

TRADE SUMMARY

The U.S. goods trade surplus with Chile was $2.7 billion in 2020, a 50.3 percent decrease ($2.7 billion) over 2019. U.S. goods exports to Chile were $12.8 billion, down 18.8 percent ($3.0 billion) from the previous year. Corresponding U.S. imports from Chile were $10.1 billion, down 2.7 percent. Chile was the United States' 21st largest goods export market in 2020.

U.S. exports of services to Chile were an estimated $5.6 billion in 2019 and U.S. imports were $2.6 billion. Sales of services in Chile by majority U.S.-owned affiliates were $12.8 billion in 2018 (latest data available), while sales of services in the United States by majority Chile-owned firms were $763 million.

U.S. foreign direct investment in Chile (stock) was $25.1 billion in 2019, a 3.5 percent decrease from 2018. U.S. direct investment in Chile is led by mining, finance and insurance, and manufacturing.

TRADE AGREEMENTS

The United States–Chile Free Trade Agreement

The United States–Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under this Agreement, as of January 1, 2015, Chile provides duty-free access to all U.S. exports. 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 (IP) rights. The United States and Chile meet regularly to review the implementation and 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. 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.

Non-Tariff 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 a customs broker when importing goods valued at over $3,000 free on board (FOB) and exporting goods valued at over $2,000 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, which include product samples, product replacements, or shipments from individuals, require the use of a customs broker for shipments valued at over $500.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANTIARY BARRIERS

Technical Barriers to Trade

Marketing and Labeling Requirements - Milk and Other Dairy Products

In September 2019, Chile notified to the WTO the "Draft Law Establishing Standards on the Marketing and Labelling of Milk,". The U.S. Government responded to Chile with comments on this measure and raised a procedural concern that the measure was signed into law on November 2, 2019, more than three weeks before the end of the published comment period. The law establishes revised standards for the manufacturing, naming, and labeling of milk products, or products derived from milk. The United States has concerns with requirements established by this legislation, including (1) restrictions on 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, along with New Zealand, raised concerns with Chile in the November 2019 and February 2020 WTO Committee on Technical Barriers to Trade meetings that the measure may not have considered international standards and may be more trade restrictive than necessary. In 2021, the United States will continue to monitor implementing regulations on the marking and labeling of milk.

Sanitary and Phytosanitary Barriers

Import Bans - Salmonid Products

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.

Import Restrictions - U.S. Blueberries

Since 2002, Chile has not permitted U.S. blueberry imports due to concerns related to spotted wing drosophila (SWD), mummy berry pathogen, and light brown apple moth (LBAM). Since 2018, the United States Department of Agriculture has worked with Chile to expedite the U.S. blueberry market access request. On August 25, 2020, Chile notified to the WTO a regulation that gives U.S. blueberries market access to the Chilean market on a case-by-case basis for blueberries from California, Washington, and Oregon. The United States will continue to engage with Chile as it works to implement the final regulation. U.S. blueberry exports to Chile are forecast to reach approximately $375,000 in 2021 and reach approximately $500,000 annually in three years.

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. However, the FTA contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Chile remained on the Priority Watch List in the Special 301 Report. The United States remains concerned about the adequacy and effectiveness of the protection and enforcement of IP rights in Chile and about to the implementation of certain IP obligations under the FTA.

Longstanding concerns remain about the lack of effective remedies to address the unlawful circumvention of technological protection measures, failure to ratify the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991), and an ineffective Internet Service Provider liability regime, which has failed to promote effective and expeditious action against online piracy. In 2018, Chile made progress in establishing criminal penalties for the importation, commercialization, and distribution of decoding devices used for the theft of encrypted program-carrying satellite signals, but the United States continues to urge Chile to clarify the full scope of criminalized activities in the implementation of the law and to address other remaining aspects of its FTA commitments on satellite piracy. In addition, the United States has urged Chile to address concerns about pharmaceutical-related IP, 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. The United States continues to monitor 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.

SERVICES BARRIERS

The United States continues to closely monitor ongoing developments relating to possible reform of the Chilean pension system. U.S. industry, which has significantly invested in the Chilean pension market, continues to seek to engage with relevant Chilean Government officials on potential recommendations that could facilitate Chile's efforts in the area of pension reform. As Chile considers pension reform, the United States encourages Chile to consult with all relevant stakeholders and to ensure that any changes are consistent with Chile's trade commitments.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $310.8 billion in 2020, a 10.0 percent decrease ($34.4 billion) over 2019. U.S. goods exports to China were $124.6 billion, up 17.1 percent ($18.2 billion) from the previous year. Corresponding U.S. imports from China were $435.4 billion, down 3.6 percent. China was the United States' 3rd largest goods export market in 2020.

U.S. exports of services to China were an estimated $56.5 billion in 2019 and U.S. imports were $20.1 billion. Sales of services in China by majority U.S.-owned affiliates were $59.6 billion in 2018 (latest data available), while sales of services in the United States by majority China-owned firms were $20.6 billion.

U.S. foreign direct investment in China (stock) was $116.2 billion in 2019, a 6.3 percent increase from 2018. U.S. direct investment in China is led by manufacturing, wholesale trade, and finance and insurance.

TRADE AGREEMENTS

On January 15, 2020, the United States and China signed an historic economic and trade agreement, known as the "Phase One Agreement." This Phase One Agreement requires structural reforms and other changes to China's economic and trade regime in the areas of intellectual property (IP), technology transfer, agriculture, financial services, and currency and foreign exchange. The Phase One Agreement also includes a commitment by China to make substantial additional purchases of U.S. goods and services in calendar years 2020 and 2021. Importantly, the Phase One Agreement establishes a strong dispute resolution system that ensures prompt and effective implementation and enforcement. Since the entry into force of the Phase One Agreement in February 2020, the United States continues to engage China as issues arise and will continue to monitor developments closely.

SIGNIFICANT 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 2020 Report to Congress on China's WTO Compliance, issued on January 15, 2021; 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.

Tariffs

China's average Most-Favored-Nation (MFN) applied tariff rate was 7.6 percent in 2019 (latest data available). China's average MFN applied tariff rate was 13.9 percent for agricultural products and 6.5 percent for non-agricultural products in 2018. China has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 10.0 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 U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. This 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.

NON-TARIFF MEASURES

Industrial Policies

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 (SOEs) but also other domestic companies attempting to move up the economic value chain.

One of the more far-reaching and harmful industrial plans is known as "Made in China 2025". China's State Council released this industrial plan in May 2015. It is a ten-year plan targeting ten strategic 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 an evolving and increasingly sophisticated approach to "indigenous innovation," which is also 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 and, with this foundation, to enable Chinese companies to dominate international markets.

Made in China 2025 seeks to build up Chinese companies in the ten targeted, strategic sectors at the expense of, and to the detriment of, foreign industries and their technologies through a multi-step process over ten 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, IP, and know-how and their own brands. The next goal of Made in China 2025 is to substitute domestic technologies, products, and services for foreign technologies, products, and services in the China market. The final goal of Made in China 2025 is to capture much larger worldwide market shares in the 10 targeted, strategic sectors.

Many of the policy tools being used by China to achieve the goals of Made in China 2025 raise serious concerns. These tools 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 China 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 fully achieve the industrial policy goals set forth in Made in China 2025, it is still likely to create or exacerbate market distortions and create severe excess capacity in many of the targeted 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, the U.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.

While public references to Made in China 2025 subsided after June 2018 reportedly in response to an order from the central government, it is clear that China remains committed to achieving the goals of Made in China 2025 and continues to seek dominance for Chinese firms in the sectors it considers strategic, both within China's market and globally. For example, in September 2020, the central government issued a guiding opinion encouraging investment in strategic emerging industries and, among other things, called for the support and creation of industrial clusters for strategic emerging industries, along with the use of various types of government support and funding. The guiding opinion specifically encouraged provincial and local governments to support industries such as advanced information technology, NEVs and biopharmaceuticals. Since then, provincial and local governments have been issuing action plans to develop strategic emerging industries. Strategic emerging industries are expected to be a focus during the upcoming 14th Five-Year Plan period, which runs from 2021 through 2025.

State-owned Enterprises

While many provisions in China's WTO accession agreement indirectly discipline the activities of state-owned and state-invested enterprises, China also agreed to some specific disciplines. In particular, it agreed that laws, regulations, and other measures relating to the purchase of goods or services for commercial sale by state-owned and state-invested enterprises, or relating to the production of goods or supply of services for commercial sale or for non-governmental purposes by state-owned and state-invested enterprises, would be subject to WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations, such as price, quality, marketability, and availability, and that the Chinese Government would not influence the commercial decisions of state-owned and state-invested enterprises.

In subsequent bilateral dialogues with the United States, China made further commitments. In particular, China committed to develop a market environment of fair competition for enterprises of all kinds of ownership and to provide them with non-discriminatory treatment in terms of credit provision, taxation incentives, and regulatory policies.

However, instead of adopting measures giving effect to its commitments, China instead established the State Owned Asset Supervision and Administration Commission (SASAC) and adopted the Law on State-owned Assets of Enterprises as well as numerous other measures mandating state ownership and control of

many important industrial sectors. The Chinese Communist Party also received a decisive role in state-owned and state-invested enterprises' major business decisions, personnel changes, project arrangements, and movement of funds. These measures enable the Chinese Government and the Party to intervene in these enterprises' business strategies, management, and investments, to ensure that they play a dominant role in the national economy to develop China's "socialist market economy" and China's industrial plans.

Separately, the Chinese Government also has issued a number of measures that restrict the ability of state-owned and state-invested enterprises to accept foreign investment, particularly in key sectors. Some of these measures are discussed below in the Investment section and include restrictions on foreign investment in state-owned and state-invested enterprises operating not only in the public sector but also in China's private sector.

In its 2013 Third Plenum Decision, China endorsed a number of far-reaching economic reform pronouncements, which called for making the market "decisive" in allocating resources, reducing Chinese Government intervention in the economy, accelerating China's opening up to foreign goods and services, and improving transparency and the rule of law to allow fair competition in China's market. It also called for reforming China's SOEs.

An example of these reform efforts included China's announcement that it would classify these enterprises into commercial, strategic, or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. But this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy, food, resource, cyber and information security interests, and public service requirements.

Similarly, in recent years, China has pursued reforms through efforts to realize "mixed ownership." These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices and create new opportunities for inefficient state-owned and state-invested enterprises.

China has also previously indicated that it would consider adopting the principle of "competitive neutrality" for SOEs. However, China has continued to pursue policies that further enshrine the dominant role of the state and its industrial plans when it comes to the operation of state-owned and state-invested enterprises. For example, China has adopted rules ensuring that the Chinese Government continues to have full authority over how state-owned and state-invested enterprises use allocations of state capital and over the projects that SOEs pursue.

Overall, while China's efforts at times have appeared to signal a high-level determination to accelerate needed economic reforms for state-owned and state-invested enterprises in order to make them operate on the same terms as private commercial operators, those reforms have not materialized. It seems clear that China's past policy initiatives were not designed to reduce the presence of state-owned and state-invested enterprises in China's economy, nor to force them to compete on the same terms as private companies. Rather, the reform objectives were to consolidate and to strengthen state-owned and state-invested enterprises and to place them on a more competitive footing, both in China and globally, through continued provision of preferential access to state capital, and the use of other policies and practices designed to give them artificial advantages over their private competitors.

This unfair situation is compounded for foreign companies as both China's state-owned and state-invested enterprises and China's private companies benefit from a wide array of other state intervention and support designed to promote the development of Chinese industry. These intervention and support work, in large part, by restricting, taking advantage of, discriminating against or otherwise creating disadvantages for foreign companies and their technologies, products, and services.

Industrial 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. As of March 2021, the United States has been able to address some of these subsidies through countervailing duty proceedings conducted by the U.S. Department of Commerce 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 19 years ago, China has not submitted to the WTO a complete notification of subsidies maintained by the central government. It also did not notify a single sub-central government subsidy until July 2016, when it provided information focusing 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 European Union (EU) and Japan to identify further effective action and potential rules that could address problematic subsidies practices not currently covered by existing obligations. In January 2020, the trade ministers of the United States, the EU, and Japan issued a statement agreeing to strengthen the WTO subsidy rules by: (1) outright prohibiting certain egregious types of subsidies; (2) requiring the subsidizing country to demonstrate for other distortive subsidy type that the subsidy provided did not cause adverse effects; (3) building upon the existing "serious prejudice" rules; (4) putting some teeth into the notification rules; (5) clarifying the rules for determining when domestic prices can be rejected and how to establish a proper benchmark; and, (6) developing a new definition of what constitutes a "public body."

Fisheries Subsidies

China's subsidies to the fisheries sector have been estimated to exceed $4 billion annually, which is particularly troubling given the role that harmful fisheries subsidies play in contributing to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries, and in the years since its WTO accession, China has continued to support its fishing fleet through subsidies and other market-distorting means. Its annual fisheries harvest has grown to nearly double that of other top producers in terms of marine capture. At the same time, Chinese-flagged fishing vessels repeatedly have been reported to have engaged in illegal, unreported, and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift some of its overcapacity to international fisheries by providing a much higher rate of subsidy support to its distant water fishery enterprises.

The United States continues to raise its long-standing concerns over China's fisheries subsidies programs. In 2015, the United States submitted a written request for information pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). This submission addressed fisheries subsidies provided by China at central and sub-central levels of government. The subsidies at issue were set forth in nearly 40 measures and included a wide range of subsidies, including fishing vessel acquisition and renovation grants, grants for new fishing equipment, subsidies for insurance, subsidized loans for processing facilities, fuel subsidies, and the preferential provision of water, electricity, and land. When China did not respond to these questions, the United States submitted an Article 25.10 counter notification covering these same measures. More recent subsidy notifications by China have been more fulsome, but still incomplete.

The United States will continue to investigate the full extent of China's fisheries subsidies and will continue to press China to fully comply with its WTO subsidy notification obligations. The United States will also seek to prohibit harmful subsidies as part of the ongoing WTO negotiations on fisheries subsidies.

Excess Capacity

Because of its state-led approach to the economy, China is the world's leading creator of non-economic capacity, as evidenced by the severe and persistent excess capacity situations in several industries, including, for example, steel, aluminum, solar panels, and fishing. 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 China is doling out hundreds of billions of dollars to support Chinese companies——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.

Currently, China's steelmaking capacity represents roughly one-half of global capacity and more than twice the combined capacity of the EU, Japan, the United States, and Brazil. China's steel production climbed above 1 billion metric tons for the first time in 2020, reaching 1,053 million metric tons, a 5.3 percent increase from 2019, despite a significant contraction in global steel demand caused by the COVID-19 pandemic. This sustained ballooning of steel production, combined with rising steel inventories in China and recent measures to incentivize steel exports, threatens to flood the global market with excess steel supply at a time when the steel sector outside China is still recovering from the severe COVID-19 pandemic-related demand shock. China remains by far the world's largest exporter of steel, exporting in 2019 roughly double the quantity of steel exported by Japan, the world's second largest steel exporter.

Similarly, primary aluminum production capacity in China increased by more than 1,500 percent between 2000 and 2020, with China accounting for more than 80 percent of global capacity growth during that period. Much of this capacity addition has been built with support by the Chinese Government. China's primary aluminum capacity now accounts for more than 57 percent of global capacity and is more than double the capacity of the next ten aluminum-producing countries combined. As in the steel sector, China's aluminum production has also ballooned in recent years, including through 2020, as China's aluminum production has continued to increase despite global demand shocks. China's capacity and production continue to contribute to major imbalances and price distortions in global markets, harming U.S. aluminum producers 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 or impose import quotas on steel and aluminum products after finding that excessive imports are a threat to U.S. national security.

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 2009, the United States has attempted to address these policies, which provide various preferences when IP is owned or developed in China, both broadly across sectors of China's economy and specifically in the government procurement context.

For example, at the May 2012 U.S.–China Strategic and Economic Dialogue (S&ED) meeting, China committed to treat intellectual property (IP) owned or developed in other countries the same as IP owned or developed in China. The United States also used the 2012 U.S.–China Joint Commission on Commerce and Trade (JCCT) process 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 would treat IP owned or developed in other countries the same as domestically owned or developed IP. Once again, however, these commitments were not fulfilled. China continues to pursue myriad policies that require or favor the ownership or development of 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. A decade later, however, this promise has still not been fulfilled as of March 2021. 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, the United States has been using mechanisms such as 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.

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, the United States initiated a Section 301 investigation that focused on policies and practices of the Chinese Government related to technology transfer, IP, and innovation. Specifically, in its initiation notice, the United States 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 IP 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 IP; and, (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains.

In March 2018, the United States 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, the United States 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 the 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), addresses several of the unfair trade practices of China that were identified in the 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.

Since the entry into force of the Phase One Agreement in February 2020, the United States has continually engaged with the U.S. business community, including on concerns about China's informal, unwritten actions that force or pressure U.S. companies to transfer their technology to Chinese entities. The United States has engaged China as issues arise and will continue to monitor developments closely.

Investment Restrictions

China seeks to protect many domestic industries through a restrictive investment regime. Many aspects of China's current investment regime continue to cause serious concerns for foreign investors. For example, China's Foreign Investment Law and implementing regulations, both of which entered into force in January 2020, perpetuate separate regimes for domestic investors and investments and foreign investors and investments, and invite opportunities for discriminatory treatment.

Liberalization of China's investment regime has been insufficient, evidenced by the continued application of prohibitions, foreign equity caps, joint venture requirements, and other restrictions in certain sectors. China's most recent version of its Foreign Investment Negative List, which entered into force in July 2020, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, agriculture, certain extractive industries, and certain manufacturing industries. With regard to services sectors in particular, China maintains prohibitions or restrictions in key sectors such as cloud computing services, telecommunications services, film production and film distribution services, and video and entertainment software services.

China's Foreign Investment Law, implementing regulations, and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments, with a system that would be applied only to "restricted" sectors. However, it remains unclear whether China is fully achieving that objective in practice. Moreover, 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. In addition, the establishment of a potentially overly broad national security review mechanism that lacks clear implementation guidelines, 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 companies also continue to report that Chinese Government officials may condition investment approval on a requirement that a foreign company 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. Over the years, the United States has repeatedly raised concerns with China about its restrictive investment regime. As of March 2021, this sustained bilateral engagement has not led to a significant relaxation of China's investment restrictions, with the exception of financial services sectors. Given that China's investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they were a focus of the US. Section 301 investigation. The responsive actions taken by the United States as a result of that investigation are intended in part to address this 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.

Standards

China continues to implement large-scale reforms to its standards system. These reforms seek 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. 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.

While China has been issuing these implementing measures, its 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.

Over the years, 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 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 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.

In September 2020, the Standardization Administration of China (SAC) released its first Annual Report on China's Standardization Development, which summarized China's standardization activities in 2019. The report also described a planned initiative, China Standards 2035, which had not yet been published as of December 2020. This initiative is expected to become a key focus in the upcoming 14th Five-year Plan period. According to SAC, this initiative will focus on, among other things, the goal of making China a net recipient of licensing fees, as more and more of China's standards are adopted as international standards and used in information and communications technology (ICT) products.

Secure and Controllable ICT Policies

In 2020, Chinese ministries continued to issue implementing measures for China's Cybersecurity Law, a continued source of serious concern for U.S. companies since the law's enactment in November 2016. Of particular concern are the Measures for Cybersecurity Review, issued in April 2020 and effective as of June 2020. This measure implements one element of the cybersecurity regime created by the Cybersecurity Law. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage, and reliability of supply chains. U.S. companies are concerned that measures like this one, which identifies supply chain reliability as a metric, may be used as justification for deciding not to procure U.S. products.

As demonstrated in the implementing measures for the Cybersecurity Law, 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 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, imposed local content requirements, imposed domestic R&D requirements, considered the location of R&D as a cybersecurity risk factor, and required the transfer or disclosure of source code or other 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 intended or designed 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 (WTO TBT Committee).

Again, however, China has not honored its promises. The numerous draft and final cybersecurity implementation measures issued by China from 2017 through 2020 raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the 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. In August 2020, the State Cryptography Administration issued the draft Commercial Cryptography Administrative Regulations to implement the Cryptography Law. This draft measure did not address the concerns that the United States and numerous other stakeholders had raised regarding the Cryptography Law. The United States will continue to monitor implementation of the Cryptography Law and related measures. The United States will also remain vigilant about monitoring the introduction of any new requirements hindering technologically neutral use of robust, internationally standardized encryption.

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 former anti-monopoly enforcement authorities from the National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM), and the State Administration of Industry and Commerce in one of its bureaus. It had been hoped that centralized anti-monopoly enforcement would lead to policy adjustments that address the serious concerns raised by the United States and other WTO Members in this area, but as of March 2021 it does not appear to have led to significant policy adjustments.

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 SOEs. While Chinese regulatory authorities have clarified that the Anti-monopoly Law does apply to SOEs, they have brought enforcement actions primarily against provincial government-level SOEs, rather than central government-level SOEs under the supervision of the SASAC. In addition, provisions in the Anti-monopoly Law protect the lawful operations of SOEs 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 SOEs.

Another concern expressed by U.S. industry is that remedies imposed on foreign-owned companies, including U.S.-owned companies, in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further industrial policy goals. 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, China's regulatory authorities have pressured foreign companies to "cooperate" in the face of unspecified allegations and have 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, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment.

State-directed mergers of SOEs are also a concern. SAMR does not provide sufficient information about decisions regarding 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.

Given the state-led nature of China's economy, the need for careful scrutiny of anti-competitive government restraints and regulation is high. The Anti-monopoly Law's provisions on the abuse of administrative (*i.e.*, government) power are potentially important instruments for reducing the Chinese Government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the Opinions on Establishing a Fair Competition Review System (OEFCRS) in 2016 reflects a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anti-competitive regulation of competition. However, implementing measures contain a broad list of exemptions, including for national economic security, cultural security, national defense construction, poverty alleviation, disaster relief and general "public interest" considerations. It is not yet clear whether the new Fair Competition Review System established by the OEFCRS will achieve its stated goals in view of the strength of the state in China's economy.

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 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 U.S. Government and 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, as of March 2021, 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 revised Drug Registration Regulations in January 2020. 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, China agreed to establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that covers 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. The United States has been working closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the Phase One 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. China has since amended the Patent Law with respect to patent term extensions, effective June 2021. The United States is closely monitoring China's implementation of this commitment. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

Medical Devices

For many years, working closely with U.S. industry, the United States has been engaging China and raising concerns about its pricing and tendering procedures for medical devices and its discriminatory treatment of imported medical devices. At the November 2015 JCCT meeting, China did commit that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, China has not fulfilled this promise.

In recent years, the United States has pressed China's regulatory authorities to develop sound payment systems that adequately incentivize research and development in the medical device sector. China's approach to volume-based procurement and its new national tendering process for stents suggests that China's system may not sufficiently consider quality or clinical efficacy in these processes. Both processes do not account for differences in technological innovation or clinical outcomes, and may limit access to China's market for U.S. companies. Additionally, the medical devices sector has been identified by the Chinese Government as a priority strategic sector for domestic development under the Made in China 2025 industrial plan.

The United States will continue to urge China to provide imported medical devices with fair and equal access to China's market.

Cosmetics

Over the past several years, the United States and U.S. industry have engaged with CFDA and its successor, the National Medical Products Administration (NMPA), to highlight concerns with China's regulation of cosmetics. As of March 2021, U.S. concerns generally have not been addressed, either in the Cosmetics Supervision and Administration Regulation (CSAR) that China issued in final form in June 2020 or in various draft CSAR implementing measures issued for public comment. Instead, China has gone forward with finalizing and adopting CSAR implementing measures largely without addressing U.S. concerns.

Since June 2020, China has issued about a dozen draft measures to implement the new CSAR regulatory structure for public comment, nine of which China also has notified to the WTO TBT Committee. While the language in the CSAR suggests that China is seeking to modernize its regulation of cosmetics and reduce the time required for product and ingredient registration and approval, the draft implementing measures contain provisions that would require the disclosure of much more information than was previously needed to manage product safety in China's cosmetic marketplace. The United States has expressed concern to China that Chinese regulators are applying the same approach to general and special cosmetics as is used with drugs and medical devices, which present much higher risks. China is introducing new requirements, which do not align with the filing and registration requirements for cosmetics in other major markets and will be very burdensome for importers.

The United States is concerned that some of the draft implementing measures do not provide adequate assurances as to how undisclosed information, trade secrets, and confidential business information will be protected from unauthorized disclosure. This concern is particularly acute in light of the significant investments in research, development, and branding that characterize the U.S. cosmetics industry, and given that China requires disclosures of information that other countries do not mandate for cosmetics market access. The United States has also urged NMPA to eliminate the requirement that companies publicly disclose on NMPA's website detailed information as to the methods and test data that they use to validate efficacy claims, as required by the Specifications for Cosmetic Registration and Filings. This information constitutes valuable trade secrets and confidential business information developed and owned by cosmetics brands or independent test labs. As of March 2021, China has not engaged with industry to find alternative means to address China's regulatory goal of educating cosmetics consumers that do not put companies' trade secrets and confidential business information at risk.

Despite repeated requests from the United States and other WTO Members, NMPA has not clarified if imported products, unlike domestically manufactured products, will still have to report results on animal tests conducted locally in China to establish compliance with international good manufacturing practices (GMP) standards, if the imported products do not have a regulator-issued GMP certificate. The United States questions the need for China to require animal testing as a proxy for GMP conformity. The animal testing requirement is not only unduly burdensome, but also effectively makes exporting to China impossible for many companies. As the United States has explained, animal testing is not how GMP is verified in other major markets. To date, however, China has been unwilling to consider other means of establishing conformity, such as third-party inspection and certification programs.

In addition, as of March 2021, despite repeated engagement, China has maintained that imported products are required to have a regulator-issued GMP certificate to establish equal treatment with domestically manufactured products, given that China's regulatory Chinese authorities can inspect domestic manufacturing facilities. China's approach does not reflect the low health and safety risks of cosmetics products, nor does it recognize that other countries, including the United States and the EU, have other means of monitoring companies use of GMP, based upon the ISO cosmetics GMP standard ISO 22716.

In November 2019, NMPA issued a draft implementing measure for public comment, the Interim Administrative Provisions for Overseas Inspection of Cosmetics, which references inspection norms for medical products. This draft implementing measure is not appropriate for cosmetics and does not recognize international GMP standards.

Despite years of United States engagement with China via the JCCT, the International Cooperation on Cosmetics Regulation, and other fora to share views and expertise regarding the regulation of cosmetics, as of March 2021 China has not yet addressed key U.S. trade concerns, including basic concerns such as the need to use international standards to facilitate cosmetics conformity assessment, nor has it provided assurances that U.S. intellectual property will be protected. Until China addresses these concerns, many U.S. companies will be impeded in accessing, or simply be unable to access, the Chinese market.

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 automotive batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China removed those export restraints in 2015. In 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 2020, the Chinese Government attempted to manage the export of many primary, intermediate, and downstream products by raising or lowering the value-added tax (VAT) rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty, and unfairness in the global markets for some products, particularly downstream products where China is a leading world producer or exporter, such as products made by the steel, aluminum, and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also 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. This promise too, however, remains unfulfilled. As of March 2021, 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.

Import Ban on Recyclable Materials

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic, paper, and metals. China has also employed import licensing and inspection measures in order to restrict imports of these materials that appear to not be aligned with international standards. Notably, it appears that China does not apply similar restrictions to domestically sourced scrap and recovered materials.

In June 2020, China's Ministry of Ecology and Environment announced that it would further tighten rules at the beginning of 2021, effectively stopping imports of almost all unprocessed scrap materials while allowing imports of some processed scrap materials, including "recycled raw materials" such as copper, aluminum and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper. In addition, in September 2020, the Chinese Government implemented a new Solid Waste Law, which includes a provision to "basically realize zero imports of solid waste," but it failed to provide a definition, scope or timeline for implementation.

This state of affairs has effectively halted the export of all scrap materials to China. The shipping industry is unwilling to accept any scrap materials for export to China, even if they would seemingly satisfy China's law, given that the customs authorities in China may reject them.

U.S. exports to China of the scrap and recovered materials covered by the Chinese measures in effect in 2020 totaled $479 million in 2016, the year before China started to pursue its more restrictive policies. Since then, U.S. stakeholders have reported significant negative impacts on their exports. In 2018, total U.S. exports of scrap materials to China were reduced by one third, with some of these materials experiencing a complete cessation of trade. In 2020, trade in scrap materials was negligible, and prices for the affected scrap materials have not recovered outside of China.

In 2020, alongside other WTO Members, the United States continued to raise serious concerns with China. In WTO committee meetings throughout the year, the United States and other WTO Members urged China to halt the implementation of its regulatory regime for scrap and recovered materials and to consider the adoption of policies in line with international standards and practice.

Trade Remedies

As of March 2021, China had in place 111 antidumping (AD) measures, affecting imports from 16 countries or regions. China also had in place six countervailing duties (CVD) measures, affecting imports from four countries or regions. In addition, China had seven AD and four CVD investigations in progress. The greatest systemic shortcomings in China's AD and CVD practice continue to be in the areas of transparency and procedural fairness, and in recent years China had invoked AD and CVD remedies under troubling circumstances. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending AD and CVD proceedings, to adhere strictly to WTO rules in the conduct of its trade remedy investigations. The United States has also consistently pursued WTO dispute settlement where necessary.

In practice, it appears that China's conduct of AD investigations continues to fall short of full commitment to the fundamental tenets of transparency and procedural fairness embodied in the WTO Anti-Dumping Agreement. In 2020, the United States and other WTO members continued to express concerns about key lapses in transparency and procedural fairness in China's conduct of AD investigations. The principal areas of concern include MOFCOM's inadequate disclosure of key documents placed on the record by domestic Chinese producers; insufficient disclosures of the essential facts underlying MOFCOM decisions, such as dumping margin calculations and evidence supporting injury and dumping conclusions; MOFCOM's failure to issue supplemental questionnaires in instances where MOFCOM seeks additional information from U.S. respondents; the improper rejection of U.S. respondents' reported cost and sales data; the unjustified use of facts available; and MOFCOM's failure to adequately address critical arguments or evidence put forward by interested parties. These aspects of China's AD practices have been raised with MOFCOM in numerous proceedings. Some of them have also been challenged by the United States in WTO cases involving grain oriented flat-rolled electrical steel (GOES), chicken broiler products, and automobiles. In each of the WTO cases, the WTO has upheld U.S. claims relating to transparency and procedural fairness.

A review of China's conduct of CVD investigations makes clear that, as in the AD area, China needs to improve its transparency and procedural fairness when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of CVD investigations. For example, China initiated investigations of alleged subsidies that raised concerns, given the requirements regarding "sufficient evidence" in Article 11.2 of the SCM Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the SCM Agreement.

Notably, the United States has expressed serious concerns about China's pursuit of AD and CVD remedies that appear intended to discourage the United States and other trading partners from the legitimate exercise of their rights under WTO AD and CVD rules and the trade remedy provisions of China's accession agreement. 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. The U.S. continued response has been to file and prosecute three WTO cases. The decisions reached by the WTO in these three cases, which involved GOES, chicken broiler products, and automobiles, confirm that China failed to abide by WTO disciplines when imposing the duties at issue.

In 2020, China initiated a total of eight trade remedy investigations, including four AD investigations and four CVD investigations. Of these eight trade remedy investigations, six of them were investigations of products imported from the United States. In a number of these investigations, it appears that China's practices continue to result in dubious conclusions and diverge from international practices. For example, in a November 2020 final AD determination addressing imports of n-propanol from the United States, a November 2020 final AD determination addressing imports of polyphenylene sulfide from the United States, and a December 2020 final determination address imports of ethylene propylene diene monomer from the United States, MOFCOM found that there was a "non-market situation" in certain energy sectors in the United States. This finding was made without defining the term "non-market situation" or identifying any legal basis in China's law to make such a finding. In a November 2020 final CVD determination addressing imports of n-propanol from the United States, China assumed, with little analysis, that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products that were two stages of production downstream. Similar allegations of a "non-market situation" in certain U.S. energy sectors and "pass through" oil and gas subsidies have been included in recently initiated cases on imports of polyphenylene ether, polyvinyl chloride and glycol ethers from the United States.

Government Procurement

China made a commitment to initiate negotiations to become a Party to the WTO Agreement on Government Procurement (GPA) by tabling an Appendix 1 offer as soon as possible following its WTO Accession. As of March 2021, however, the United States has viewed China's offers as incommensurate with the coverage offered by other GPA parties in scope and coverage. Most recently, in October 2019, China submitted its sixth revised offer. 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. requests 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. Although China has since stated that it will "speed up the process of joining" the GPA, it did not submit a new offer in 2020. China only submitted a revision to its checklist of issues, which updates GPA parties on changes to China's existing government procurement regime since its last update in 2008.

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 Ministry of Finance invited comments to draft amendments to their government procurement law (GPL), and the United States provided its comments in January 2021. The Tendering and Bidding Law falls under the jurisdiction of the 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. In December 2020, China released a draft revised Government Procurement Law for public comment, and the United States submitted written comments on it in early January 2021.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services, and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. China also has proposed but has not yet adopted clear rules on what constitutes a domestic product. As a result, there are no specific metrics, such as a percentage of value-added within China, for foreign products to qualify for many procurements and tenders, which often works to the disadvantage of foreign companies.

China has been an observer to the WTO Committee on Government Procurement since February 2002.

Corporate Social Credit System

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies by 2020. The implementation of this system through a new information collection network is at a more advanced stage for companies versus individuals, as "unified social credit codes" have been assigned to every domestic and foreign company in China. These 18-digit codes provide a way for the Chinese Government to match a company with its record of administrative compliance across a range of regulatory and enforcement bodies. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results and other administrative enforcement activities have now been consolidated under a company's unified social credit code. All of this data is stored in the National Enterprise Credit Information Publicity System (NECIPS).

In addition to information gathered through government inspections, reviews and related activities, companies themselves transfer data to the NECIPS as mandated by various reporting processes, including information relating to investments and business operations. If the data collected on a company includes negative ratings, including being placed on a government agency's blacklist, the company's social credit score will be downgraded. Negative ratings or placement on a government agency's blacklist can lead to various restrictions on a company's business activities. A company could face increased inspections, reduced access to loans and tax incentives, restrictions on government procurement, reduced land-use rights, monetary fines or permit denials, among other possible penalties. The social credit system has been tied to larger policy objectives as well. For example, in November 2018, NDRC and China's National Intellectual Property Administration (CNIPA), together with 36 other Party and government entities, jointly signed the Memorandum of Cooperation on Joint Punishment of Seriously Dishonest Entities in the Field of Intellectual Property Rights (Patents). This measure and related measures seek to strengthen China's intellectual property protection by linking enforcement with the social credit system.

Currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies. Instead, certain Chinese Government agencies, such as CNIPA, the Cyberspace Administration of China (CAC), and the General Administration of Customs, among several others, maintain their own

rating systems at central and local levels of government and make their own decisions about the types of transgressions that warrant negative ratings or placing a company on a blacklist. As of March 2021, it appears that most of these systems are being used to promote regulatory compliance.

In a broad effort focused on rating financial creditworthiness, NDRC announced in September 2019 that 33 million companies had been included in the first batch of comprehensive public credit appraisals. These companies were assigned one of four grades—excellent, good, fair or poor—depending on their creditworthiness and whether they appeared on any government agency blacklists. NDRC has indicated that all companies operating in China will eventually be subject to comprehensive public credit appraisals and will receive differing levels of regulatory scrutiny depending on their grades. With a few exceptions, the comprehensive scores are not made public, and the formula used to calculate the rankings are unknown. In July 2020, NDRC and PBOC jointly issued the draft Guiding Opinions for Further Standardizing the Input Scope of Public Credit Information, Penalty for Bad Credit, and Credit Repairs in Building a Long-Term Mechanism for Credit Regime Construction, which again called on government agencies to standardize procedures for evaluating credit violations and for sharing credit information sharing between government agencies to better implement joint punishments.

It appears that SAMR, which manages the NECIPS, is closely involved with coordinating these disparate systems, although NDRC retains the lead for coordinating Chinese data standardization nationally. The goal is for NECIPS to serve as a single, national platform for sharing corporate social credit information throughout the Chinese Government and to enable relevant agencies to pursue joint punishment for repeat or egregious offenders. For example, in July 2019, SAMR issued the draft Measures for Administration of the List of Serious Violators of Trust and Law for public comment. In this draft measure, SAMR outlines a series of circumstances that would warrant a company being included in SAMR's centrally managed blacklist, which the draft measure refers to as a list of companies that have committed "serious violations of law and trust." It appears that this blacklist would include companies that have committed the types of violations that currently warrant inclusion on individual agencies' blacklists as well as other types of violations of law or trust. The blacklist would set forth the name of the company and the reasons for its inclusion and would be publicly available through the NECIPS website. In the draft measure, SAMR also calls for agencies to share the underlying information that led to a company's blacklisting with each other and with industry associations in order to facilitate joint punishment of blacklisted companies.

Foreign companies are concerned that the corporate social credit system will also be used by the Chinese Government to pressure them to act in accordance with relevant Chinese industrial policies or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. Foreign companies are also concerned about the opaque nature of the corporate social credit system. Currently, for example, a company sometimes only learns about its negative ratings when it requests a permit and receives a denial, even though the Measures for Administration of the List of Serious Violators of Trust and Law includes a requirement that companies be informed of their blacklisting in advance. Other times, a company learns for the first time that it has been blacklisted when a Chinese Government agency posts its name on the agency's website, even though the blacklisting of a company can cause severe harm to the company's reputation and adversely impact its efforts to attract customers, secure needed financing or make new investments. When Chinese Government agencies begin to pursue joint punishment in the way that NDRC envisions, it also may mean that an infraction in one regulatory context could have wider consequences across the company's business operations.

Another key concern regarding the corporate social credit system involves its links to the individual social credit system. In this regard, in addition to its own corporate behavior, a company may be required to monitor key personnel to ensure that their individual social credit scores do not decline because of negative ratings and adversely impact the company's corporate social credit score. Given the similarly opaque nature of the individual social credit system and its goal of comprehensively regulating an individual's behavior,

this linkage between the two systems places foreign companies in an untenable position. For example, if key employees of a foreign company operating in China exercise their freedom of speech in an individual capacity in a way that the Chinese Government finds objectionable, it appears that the corporate social credit system could be deployed to punish the company.

Other Non-Tariff Measures

A number of other non-tariff measures can adversely affect the ability of U.S. industry to access or invest in China's market. Key areas include China's labor laws, laws governing land use in China, commercial dispute resolution and the treatment of non-governmental organizations. Corruption among Chinese Government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key concern.

INTELLECTUAL PROPERTY PROTECTION

Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the IP rights of domestic and foreign rights holders, as required by the WTO TRIPS Agreement. Currently, China is in the midst of revisions to certain laws and regulations. Despite various plans and directives issued by the State Council, inadequacies in China's IP 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 the Special 301 Report. In addition, in January 2021, the United States published the Notorious Markets List, 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 IP 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 IP, patents, trademarks, and geographical indications. In addition, the Phase One 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.

As of March 2021, China had published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. China had also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has work to do to finalize the draft measures that it had published and to publish other draft measures in accordance with the Intellectual Property Action Plan that it released in April 2020. China had yet to demonstrate as of March 2021 that it has increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel or that it has ensured the use of only licensed software in government agencies and SOEs. The United States continues to monitor China's implementation of the IP chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

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 IP, for the purpose of providing commercial advantages to Chinese enterprises.

In high-level bilateral dialogues with the United States over the years, China had committed to issue judicial guidance to strengthen its trade secrets regime. China had also committed not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States had 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 had 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.

The Phase One Agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the IP Chapter 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 Chinese Government.

In 2020, China published draft measures relating to civil, criminal and administrative enforcement of trade secrets, such as SAMR's draft Provisions on the Protection of Trade Secrets. In September 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement and the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights. In September 2020, the Supreme People's Procuratorate and the Ministry of Public Security also issued the Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions and thresholds for initiations of criminal investigations for trade secret theft. The United States will continue to monitor the effectiveness of these measures.

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.

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. In response to the COVID-19 pandemic, multiple reports indicate that a large number of infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

In recent years, 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 has also urged China to revise existing rules that have proven to be counterproductive.

At the November 2016 JCCT meeting, China agreed to actively promote electronic commerce-related legislation, strengthen supervision over online infringement and counterfeiting, and to work with the United States to explore the use of new approaches to enhance online enforcement capacity. In December 2016 and November 2017, China published drafts of a new E-Commerce Law for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown regime and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new E-Commerce Law, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on IP 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 electronic 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 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 electronic commerce platforms that fail to take necessary measures against infringement.

In May 2020, the NPC issued the Civil Code, which included updated notice-and-takedown provisions in the chapter on Tort Liability. In September 2020, the SPC issued Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform and the Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes. These measures relate to issues such as expeditious takedowns and the validity of notices and counternotices, but have only recently taken effect. In November 2020, the NPC adopted long-pending amendments to the Copyright Law, including provisions that increase civil remedies for copyright infringement. The United States will closely monitor the impact of these recent measures going forward.

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 Phase One 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 SOEs only use licensed software.

In August 2020, SAMR issued the Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods, and the State Council amended the Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement, which relate to the transfer of IP cases from administrative authorities to criminal authorities. During that same month, the Office of the National Leading Group on the Fight against IPR Infringement and Counterfeiting, , together with several other Party and government entities, jointly issued the Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods, which contained detailed provisions regarding the processes for destroying infringing materials, including the scope of materials to be destroyed (e.g., the goods, labels, certificate, and packaging materials), timelines for destruction (e.g., generally six months), as well as categorization, supervision, and pollution control, among other issues. In September 2020, the Supreme People's Court (SPC) issued the Opinions on Legally Imposing Heavier Punishments for Infringements of Intellectual Property Rights, which called for quick destruction of goods and stressed that, for goods which cannot be destroyed, the courts must dispose of them outside of commercial channels but in such a way that reduces the risk of further infringement as much as possible. In addition, in November 2020, the SPC also issued the Opinions on Strengthening the Protection of Copyright and Copyright-Related Rights, which contained provisions addressing requests by rights holders for immediate destruction of infringing goods in civil proceedings and the ex officio destruction of pirated goods in criminal copyright proceedings.

China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. Nevertheless, China also needs to show that it had increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel and ensured the use of only licensed software in government agencies and SOEs.

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 aims to support a dramatic expansion of U.S. food, agriculture, and seafood product exports, which will increase U.S. farm and fishery income, generate more rural economic activity, and promote job growth. The Phase One Agreement addresses a multitude of non-tariff barriers to U.S. agriculture and seafood products, including for meat and meat products, poultry, seafood, rice, dairy, infant formula, horticultural products, animal feed and feed additives, pet food, and products of agricultural 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 in 2021 and 2022, representing an average annual increase of at least $16 billion over 2017 levels. 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 had 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 governmental 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 appeared to provide support far exceeding the agreed levels. This excessive support created 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. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the Dispute Settlement Understanding (DSU) on the ground that China had failed to bring its measures

into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is suspended as of March 2021, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

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 as of March 2021. 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 originally agreed that the reasonable period of time for China to come into compliance with WTO rules would end on December 31, 2019. Since then, the United States has agreed to extend China's reasonable period of time for compliance on several occasions as it closely monitors China's ongoing administration of tariff-rate quotas for wheat, corn, and rice.

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn, and rice would conform to its WTO obligations. In addition, China agreed 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. China also committed to provide greater transparency in its administration of these TRQs.

Agricultural Biotechnology Approvals

The Chinese regulatory approval process for agricultural biotechnology products creates significant uncertainty among developers and traders, slowing commercialization of products and creating adverse trade impacts, particularly for U.S. exports of corn, soy, and alfalfa. Meanwhile, the number of products pending Chinese regulatory approval continues to increase. In addition, the asynchrony between China's biotechnology product approvals and the product approvals made by other countries has widened considerably in recent years.

In the past, biotechnology product approvals by China's regulatory authorities mainly materialized only after high-level political intervention. For example, following a meeting between the presidents of the United States and China in April 2017, 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 another the meeting between the two presidents 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. More recently, in June 2020, the NBC issued six additional product approvals and one renewal, and in December 2020 it issued two additional product approvals and three renewals.

Unfortunately, as of March 2021, the NBC still has not approved one canola event and two alfalfa events whose applications have been pending for more than eight years. In addition, while the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, 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 Committee on Sanitary and Phytosanitary Measures (WTO 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 for public comment 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. Instead, these measures seemingly provide China with a tool to control the volume of food imports as decided by China's state planners. In November 2020, China's regulatory authorities issued a further revision of the November 2019 draft measure. In January 2021, the United States submitted written comments on the draft measure in an effort to ensure that the final version of this measure is based on science and risk.

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 highly pathogenic 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 (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 had 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 it did, to help avoid unwarranted nationwide animal

disease restrictions in the future. Subsequently, during an avian influenza outbreak in South Carolina in April 2020, China did not restrict imports of poultry products from other U.S. regions.

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 appear to be 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 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 appears 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 test for *Salmonella* on 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 USDA'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, and to establish a joint working group with the United States to discuss next steps based on that risk assessment.

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.

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

Prospects for U.S. service suppliers in China should be promising, given the size of China's market. Nevertheless, while the United States exported $56.5 billion in services to China and maintained a $36.4 billion surplus in trade in services with China in 2019 (latest data available), the U.S. share of China's services market remained well below the U.S. share of the global services market, and over half of U.S. services exports by value were in education, personal travel, and other forms of travel by Chinese citizens to the United States, rather sales of services within China itself.

In 2020, numerous challenges persisted in a number 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 express delivery, cloud computing, telecommunications, film production and distribution, online video and entertainment software, 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. China's draft Personal Information Protection Law also includes restrictions on cross-border data flows and requirements to store and process data locally. These types of data restrictions undermine U.S. services suppliers' ability to take advantage of market access opportunities in China. China also had 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 that 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 had 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 had 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 have held only 1.4 percent of banking assets in China in 2020.

During the past three years, China had removed a number of long-standing barriers for foreign banks, including 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 had 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, particularly in providing capital market-related activities.

In the Phase One Agreement, China committed to remove some of these barriers and 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

In the Phase One Agreement, China committed to remove its 51 percent foreign equity cap in the securities, asset management, and futures sectors by no later than April 1, 2020. Consistent with its commitments, China announced that it would allow wholly foreign-owned companies for the securities and asset (*i.e.*, fund) management sectors as of April 1, 2020, and that it would allow wholly foreign-owned companies for the futures sector as of January 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

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.

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension, and health insurance sectors as of January 1, 2020. Prior to this announcement, China had maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors.

China allows wholly foreign-owned companies in the non-life (*i.e.*, property and casualty) insurance sector. However, the market share of foreign-invested companies in this sector is only about two percent.

In other insurance sectors, the United States continues to encourage China to establish more transparent procedures so as to better enable foreign participation in China's market. Sectors in need of more transparency include export credit insurance and political risk insurance.

Finally, some U.S. insurance companies established in China have encountered difficulties in getting the CBIRC to issue timely approvals of their requests to open up new internal branches to expand their

operations. The United States continues to urge CBIRC to work with U.S. companies to issue timely approvals.

Electronic Payment Services

In a WTO case launched in 2010, the United States challenged China's restrictions on foreign companies, including major U.S. credit and debit card processing companies, which had been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. 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 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.

By the time that the United States and China entered into the Phase One Agreement in January 2020, no foreign supplier of electronic payment services had yet 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.

Meanwhile, as China actively delayed opening up its market to foreign suppliers, the leading Chinese company, China Union Pay, 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. In June 2020, four months after the entry into force of the Phase One Agreement, one U.S. supplier became the first foreign supplier of electronic payment services to secure a license to operate in China's market. Meanwhile, the United States is closely monitoring developments as applications from two other U.S. suppliers are progressing through PBOC's licensing process. The United States will continue to 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 many other sectors, PBOC requires suppliers to localize their data and facilities in China. More recently, one U.S. company secured a license in this sector after acquiring a Chinese company that had been licensed to supply online payment services in China.

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 SOEs, and exceedingly high capital requirements, have long 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 certain value-added telecommunications services, while there are thousands of licensed domestic suppliers, and the range of licenses available to foreign suppliers is significantly less than those available to 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 had 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 Chinese market, Chinese companies dominate due in large part to restrictions imposed on foreign companies by the Chinese Government. At the same time, foreign companies continue to encounter major difficulties in attempting to offer these and other Internet-based services on a cross-border basis.

China continues to engage in extensive blocking of legitimate websites and apps, imposing significant costs on both suppliers and users of web-based services and products. According to the latest data, China currently blocks a significant portion of the largest global sites. U.S. industry research has calculated that more than 10,000 foreign 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

China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data processing and storage services and software application services provided over the Internet, is highly restrictive. China prohibits foreign companies from directly providing

any of these services from within China, which may implicate China's commitments in both computer and value-added telecommunications services. Given the difficulty in providing these services on a cross-border basis (largely due to restrictive Chinese policies, that affect the reliability of cross-border data transfers), the only option that a foreign company has to access the China market is to establish a contractual partnership with a Chinese company, which can hold the necessary Internet data center and related licenses, and turn over its valuable technology, IP, know-how, and branding as part of this arrangement. While the foreign service supplier can earn a licensing or revenue-sharing 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.

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 foreign 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. The draft measure 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 displaying foreign TV shows during prime time.

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, as of March 2021, 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, before stalling 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 presidents of the United States and China in Buenos Aires on December 1, 2018. As of March 2021, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

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 General Agreement on Trade in Services commitments relating to video distribution.

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. In the most recent iteration of the Foreign Investment Negative List, issued in June 2020, China added a new, explicit prohibition on the ability of a foreign lawyer to become a partner in a domestic law firm. Reportedly, China is also considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

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 appears to provide more favorable treatment to Chinese service suppliers when awarding business permits.

Data Restrictions

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. China's draft Personal Information Protection Law, issued for public comment in October 2020, also would include restrictions on cross-border data flows and requirements to store and process data locally. 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, including among services suppliers.

TRANSPARENCY

Overview

One of the core principles reflected throughout China's WTO accession agreement is transparency. Unfortunately, as of March 2021, 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 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.

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. However, China did commit in the Phase One Agreement to provide no less than 45 days for public comment on all proposed laws, regulations, and other measures implementing the Phase One Agreement. Since this commitment entered into force in February 2020, China has generally been providing the required 45-day public comment period and working constructively with the United States whenever it raises questions or concerns regarding provisions in proposed measures implementing the Phase One Agreement.

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.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade surplus with Colombia was $1.3 billion in 2020, a 121.7 percent increase ($706 million) over 2019. U.S. goods exports to Colombia were $12.1 billion, down 18.2 percent ($2.7 billion) from the previous year. Corresponding U.S. imports from Colombia were $10.8 billion, down 23.9 percent. Colombia was the United States' 23rd largest goods export market in 2020.

U.S. exports of services to Colombia were an estimated $7.2 billion in 2019 and U.S. imports were $4.5 billion. Sales of services in Colombia by majority U.S.-owned affiliates were $5.4 billion in 2018 (latest data available), while sales of services in the United States by majority Colombia-owned firms were $119 million.

U.S. foreign direct investment in Colombia (stock) was $8.3 billion in 2019, a 2.6 percent increase from 2018. 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 United States and Colombia work closely to review the implementation and functioning of the CTPA and to address outstanding issues.

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. U.S. consumer and industrial products are duty free under the CTPA as of January 1, 2021. Duties on some remaining U.S. agricultural goods will be phased out 12 years from entry into force (2023). Tariffs on the most sensitive products for Colombia will be phased out 15 years to 19 years from entry into force (2026-2030). U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for some sensitive products. In accordance with its CTPA commitments, Colombia has ceased applying its price band system to U.S. agricultural products.

Non-Tariff 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 Colombian 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, 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). Due to continued U.S. engagement, Colombia ended the "1x1" scrappage policy on June 26, 2019, with the issuance of Decree 1120.

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 has 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. 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 Price Review – Medicines and Medical Devices

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 a sanitary registration, or an existing sanitary registration can be renewed: (1) a health technology assessment by the Institute for Health Technological Evaluation and (2) a price determination by the health ministry. Decree 433 of March 5, 2018, subsequently modified by Decree 710 of April 21, 2018, had clarified that Colombia would not condition regulatory approvals on factors other than safety and efficacy, but 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 encourage Colombia to implement the 2014-2018 NDP provisions in such a way as to ensure that they do not unnecessarily delay marketing authorizations for health products.

Customs Barriers and Trade Facilitation

Colombia ratified the WTO Trade Facilitation Agreement (TFA) on August 6, 2020.

On August 3, 2020, Colombia published Decree 1090 of 2020 implementing the CTPA *de minimis* value threshold provision. Article 5.7(g) of the CTPA generally exempts duties and taxes for express shipments valued at $200 or less.

Colombia has significantly delayed, however, implementation of customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies. In Decree 349 of 2018, Colombia's National Directorate of Tax and Customs (DIAN) further delayed making these reforms until November 30, 2019. As of March 2021, these reforms have yet to be implemented, and Colombia has not provided clarity on a new 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.

Ethanol-related Measures

Since the entry into force of the CTPA, U.S. ethanol exports to Colombia have grown from zero to $144 million in 2019. Over this period, Colombia has proposed or implemented measures that have potential trade impacts on U.S. ethanol. Colombia implemented a COVID-19-related import ban from April 7, 2020 to August 8, 2020. In addition, in November 2019 Colombia had implemented a measure authorizing representatives from the domestic ethanol industry (a "third party observer") to monitor ethanol imports at ports of entry. Under this mechanism, DIAN inspectors and domestic ethanol industry representatives

jointly identify customs violations during the importation of ethanol into Colombia. U.S. stakeholders report customs clearance delays and additional costs due to the activities of the third-party observers. The United States raised concerns with the posting of such third-party observers at ports of entry during the CTPA Standing Committee on Agriculture meeting on December 3, 2020, as well as in past meetings with Colombia regarding the imports of other agricultural products. U.S. ethanol exporters face countervailing duties in Colombia's market.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Maximum Sodium Limits

In July 2019, Colombia notified the WTO of its proposed technical regulation establishing the maximum sodium content for the food prioritized in the framework of the National Strategy for the Reduction of Sodium Consumption. On October 30, 2019 and July 23, 2020, the United States responded to Colombia's notification by submitting two rounds of comments. Colombia responded to U.S. comments on February 4, 2020 and September 9, 2020, respectively. Colombia adopted the final regulation on November 9, 2020. This measure sets mandatory first-year and third-year maximum sodium limits for 59 processed food products. The United States understands that, once the relevant dates for compliance have passed, products exceeding those levels will not be eligible for the "certificate of compliance" required by the measure demonstrating the product's compliance with the sodium limits, thereby subjecting distributors of these products in Colombia to undefined sanctions. The United States has raised concerns about this proposal in all three meetings of the 2020 WTO Committee on Technical Barriers to Trade (WTO TBT Committee) in February, May, and October, with a coalition of Colombia's key trading partners, including Guatemala, Ecuador, Costa Rica, and the European Union. Remaining concerns include uncertainty regarding how sanctions will be applied for processed foods that do not comply with the mandatory sodium reduction levels, time required to possibly reformulate products for the Colombian market, and outstanding questions on how to obtain the certificate of conformity.

Front-of-Package Labeling

On July 27, 2020, Colombia circulated a draft front-of-package nutrition labeling regulation for a domestic 30-day consultation period. The draft regulation would require a front-of-package label for products that exceed Colombia's specified threshold for sodium, added sugar, and saturated fat. Unlike the stop-sign shaped labels currently used in Chile, Mexico, and Peru, the proposed label would include circular warning symbols for products considered high in salt/sodium, added sugar, and saturated fats. Colombia's proposed levels of sodium, sugar and saturated fats for "low" nutrient content claims appear to be aligned with the Codex Alimentarius Commission (Codex) guidelines. If added sugars, salt/sodium and/or saturated fats are one of the first ingredients, a voluntary positive seal may not be used. A product conformity certificate is required under the proposed regulation.

Good Manufacturing Practices Certificates – Alcoholic Beverages and Supplements

In July 2020, Colombia notified the WTO of a draft measure to modify Decree 1686 of 2012, the regulatory framework for the production, import, and commercialization of alcoholic beverages in Colombia. This draft measure introduces Good Manufacturing Practices (GMP) certificates as a requirement for the registration of alcoholic beverages with Colombia's food and drug regulatory authority (INVIMA). The United States has encouraged Colombia to continue to accept the currently issued U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau export certificate as an alternative.

Article 11 of Decree 3249 of 2006 requires submission of GMP certificates for the registration of both domestic and imported dietary supplements in Colombia. Decree 3249 establishes that GMP certificates for imported products must come from government authorities in the country of origin. Many U.S. dietary supplement registrations are on hold, however, after the Departments of Agriculture in several U.S. states (for example, Arizona, Florida, and New York) stopped issuing GMP certificates at various times in late 2019 and 2020. INVIMA has stated that in the absence of an authority that could issue GMP certificates, it could audit the foreign manufacturing plant directly if the U.S. company pays for related travel costs. The United States will continue to raise concerns about this issue that affects vitamin and dietary supplement products produced in the United States.

Mobile Device Labelling Regulations

On November 7, 2019, Colombia's Superintendency for Industry and Commerce (SIC) released External Circular 002, which established labeling requirements that producers, suppliers, or retailers of mobile devices must follow to indicate the cellular network (2G, 3G, 4G, etc.) the mobile device supports. Online retailers were required to implement this measure by December 20, 2019, and physical retailers by May 20, 2020. Colombia did not notify the circular to the WTO under the WTO TBT Agreement and only provided for a very short 12 calendar day domestic comment period. U.S. stakeholders have expressed concerns that the requirements of the circular are overly burdensome. They also complained about the lack of transparency during its development of, and the lack of justification for, the size of the label. The United States sent a request to Colombia's WTO TBT inquiry point in February 2020, followed by a letter from the U.S. Department of State to Colombia's SIC in March 2020, and raised concerns at the May 2020 WTO TBT Committee meeting. The United States will continue to engage Colombia on this issue.

Sanitary and Phytosanitary Barriers

Lactic Acid Limits Requirement - Milk Powder

In August 2020, INVIMA informed the United States that all U.S. shipments of milk powder to Colombia must meet the physical and chemical properties requirements in Decree 616 of 2006. Decree 616 was notified to the WTO Committee on Sanitary and Phytosanitary (SPS) Barriers in 2005 and again in 2012. The decree includes a lactic acid minimum, and non-compliance could result in shipments of U.S. milk powder being detained or rejected at the port. The basis and rationale for the measure is unclear. Codex standards for food additives only establish a maximum limit for lactic acid, and do not have a minimum limit. The United States has expressed concerns regarding the requirement and its potential trade impact, including at the CTPA Standing Committee on SPS Matters meeting on December 2, 2020. In 2020, the United States exported $81 million in total U.S. milk powder to Colombia, with average exports for 2018 to 2020 at $66 million. The United States will continue to engage with Colombia to encourage a modification of Decree 616.

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. However, the CTPA contains disciplines on government procurement.

Companies seeking to bid on public infrastructure projects have pointed to Colombia's framework law for such projects (Law 80) as a deterrent to investment. The current interpretation of the law permits unlimited liability judgments against companies and individual company officials, which is viewed as an unacceptable risk for many potential investors.

INTELLECTUAL PROPERTY PROTECTION

Colombia remained on the Watch List in the Special 301 Report. 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 2020, Colombia engaged with the United States on these outstanding CTPA commitments, particularly with regard to the implementation of ISP liability limitations as well as notice and takedown procedures.

The 2014-2018 NDP included a requirement to develop an 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 (IP) systems. In 2018, Colombia issued decrees to clarify that it will not condition regulatory approvals on factors other than safety and efficacy. This issue remains pending as of March 2021. On October 5, 2020, Colombia's National Council for Economic and Social Policy (CONPES) released a high-level strategy document that can inform future regulations concerning intellectual property issues. The CONPES strategy document addressed areas including training for judges and officials, conducting economic impact studies, and Colombia's accession to various international IP-related treaties.

While the Colombian National Police, DIAN, and Fiscal and Customs Police have increased their enforcement efforts, including in 2020, Colombia continued to experience high levels of counterfeiting and piracy, with right holders raising specific concerns about 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

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. As of March 2021, Colombia has not yet reestablished this commitment in domestic law and regulation. The United States will continue to press Colombia to revise its legislation to implement its obligations under the CTPA.

Distribution Services

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

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $375 million in 2020, a 65.0 percent decrease ($697 million) over 2019. U.S. goods exports to Costa Rica were $5.7 billion, down 7.8 percent ($486 million) from the previous year. Corresponding U.S. imports from Costa Rica were $5.4 billion, up 4.1 percent. Costa Rica was the United States' 37th largest goods export market in 2020.

U.S. exports of services to Costa Rica were an estimated $2.0 billion in 2019 and U.S. imports were $3.1 billion. Sales of services in Costa Rica by majority U.S.-owned affiliates were $1.9 billion in 2018 (latest data available), while sales of services in the United States by majority Costa Rica-owned firms were $95 million.

U.S. foreign direct investment in Costa Rica (stock) was $1.5 billion in 2019, a 4.8 percent decrease from 2018. 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) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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. However, under the CAFTA–DR, as of January 1, 2015, 100 percent of U.S. originating consumer and industrial goods have entered Costa Rica duty free.

In addition, more than half of U.S. agricultural exports currently enter Costa Rica duty free under the CAFTA–DR. 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 the timely issuance of these permits.

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 abv. 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.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Costa Rica's Border Integration Program seeks to enhance competitiveness by modernizing Costa Rica's border infrastructure, equipment, and systems to efficiently coordinate the control activities performed by border agencies. The Foreign Trade Single Window, and the Single Investment Window, are included in the Border Integration Program, facilitating trade and digitalizing customs procedures. The United States continues to encourage Costa Rica to expand its use of electronic processing in the interest of further facilitating trade.

With assistance from the U.S. Government, Costa Rica has implemented non-intrusive inspections systems, which are instrumental for reduced processing times. The Costa Rican Ministry of Finance is working towards the effective implementation of non-intrusive technologies at all land, maritime, and air border crossings, and has made compatibility with the National Center for Image Analysis a requirement.

Cosmetics and Dietary Supplements

Between January 22, 2016 and January 8, 2020, the MOH issued three decrees (Executive Decree No. 39471-S, Executive Decree No. 40629-S, and Executive Decree No. 42263-S) simplifying procedures for registration of cosmetic products and low-risk foods, for their commercialization in Costa Rica. As of March 2021, the simplified procedure applies to 58 products in 31 categories. The Chamber of Cosmetics and Cleaning for Central America and Caribbean noted that the new simplified procedure has reduced the wait for market approval for most products from 60 days to 5 days.

Since 2014, U.S. producers have 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 -Tires

In February 2019, Costa Rica approved a new regulation on safety standards for tires that recognized the U.S. National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard regulations as one basis for compliance. However, the regulation required third party certification, whereas U.S. manufacturers are able to self-certify for the U.S. market. On July 31, 2020, the United States and Costa Rica agreed that Costa Rica, pursuant to RTCR 486 (2016 Technical Regulations for Pneumatic Tires), shall recognize letters issued by the U.S. Department of Transportation, through the National Highway Traffic Safety Administration's Blue Ribbon Letter Program, as complying with Costa Rica's conformity

assessment procedures. This agreement applies to new pneumatic tires manufactured in the United States and imported for sale into Costa Rica, including pneumatic tires for passenger vehicles and campers (type II and type III tires) and for buses or trucks (type IV tires).

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 have 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. Stakeholders have expressed concern that these country-specific requirements can lead to redundant testing, particularly when products are required to undergo testing in both exporting and importing countries.

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 MOH to receive approval. One such document is a Certificate of Free Sale, which is required to have an apostille. U.S. 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 MOH published a regulation for imports of used clothing that would have required importers to wash every imported unit of used clothing at 60 degrees Celsius at a laundry facility enrolled with the MOH and certified to provide the service. This additional procedure would have increased the costs for importers of used clothing, which are mostly imported from the United States. Following U.S. private sector and U.S. Government engagement with Costa Rica, on July 2, 2020, the MOH published a new regulation for imports of used clothing and repealed the previous decree. The new regulation, Decree No. 42468-S, states the importation of used clothing does not pose a health danger to Costa Rican consumers, and requires that points of sale for used and new clothing post signs indicating clothing should be washed by consumers prior to wearing. The new decree took effect on October 3, 2020.

Sanitary and Phytosanitary Barriers

The Costa Rican Ministry of Agriculture occasionally delays the issuance of sanitary import permits for sensitive products, such as rice and onions, during specific periods, such as harvest time (usually in November to December for rice, and from April to June for onions). In addition, persistent issues remain regarding at-border processes and market access for fresh U.S. potatoes, both for chipping and table stock potatoes. The table stock market is currently closed pending completion of a pest risk assessment. During 2020, the United States exported $876,760 worth of chipping potatoes to Costa Rica. However, industry estimates that exports could increase to over $5 million if sanitary and phytosanitary (SPS) issues are addressed and the table stock market is reopened. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service and the Costa Rican Ministry of Agriculture 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 quarantine pests are intercepted in shipments. On November 25, 2019, the United States reached an agreement with Costa Rica to eliminate re-inspection of cargo after it is fumigated. The new protocol was field tested and given final approval on June 6, 2020 and should reduce the time and costs that exporters incur for cargo at port. The U.S. Government continues to meet with the Plant Health and Customs Department to identify ways in which the cost of fumigation may be reduced.

Costa Rica has a 2016 regulation requiring extensive questionnaires for animal product facilities that export products to Costa Rica. Most U.S. exporting facilities find this process overly burdensome and have complained that the questionnaire requests irrelevant business proprietary information. Many of the exporting facilities that have completed the questionnaires have yet to be registered by the Government of Costa Rica. Although U.S. companies have complained that dairy products are the most affected by this requirement, the measure also affects seafood, lamb, and egg products.

GOVERNMENT PROCUREMENT

U.S. companies have indicated that the private sector 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, in 2019, the Costa Rican Government invoked Article 2 in 86 instances for a total contracted amount of $27.5 million in ICT goods and services. As part of the Organization for Economic Cooperation and Development (OECD) accession process, Costa Rica has committed to work to reduce the total value of contracts awarded under Article 2 exceptions. However, the number of contracts awarded with exceptions continues to increase.

Private sector insurance companies and brokers have complained that Costa Rica preferentially contracts with the state-owned insurance company, Instituto Nacional de Seguros (INS). In 2017, however, the Social Security Administration 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. All Costa Rican Government agencies are legally obligated to migrate to the system, and most have done so as of October 2020. 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 March 2021, approximately 700 foreign firms had 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. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Costa Rica was removed from the Watch List in the Special 301 Report due to the concrete steps it took to improve its intellectual property (IP) regime, including to address unlicensed software use in the central government and to implement an online recordation system to improve border enforcement. 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 Copyright Registry is expected to issue its first report on government usage of unlicensed software in early 2021, and the United States will continue to monitor this issue. The United States also continues to urge Costa Rica to bolster IP enforcement to curb online piracy, address cumbersome border measure processes to deter counterfeit and pirated goods, and effectively utilize *ex officio* authority for border enforcement against counterfeit and pirated goods. 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 the National Insurance Institute (INS) derives from its former monopoly position. Nevertheless, the competitive environment for those companies has gradually improved; the INS's percentage of the insurance market decreased from 85 percent in 2014 to 72.5 percent in July 2020. The number of companies providing insurance in the market has remained steady at 13 since 2015.

INVESTMENT BARRIERS

Costa Rica's regulatory environment can pose significant barriers to investment in some sectors. One common problem, according to industry, 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. However, 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 better conditions for investment.

OTHER BARRIERS

Bribery and Corruption

U.S. stakeholders have expressed concern that corruption in the Costa Rican Government, including in the judiciary, continues to constrain successful investment in Costa Rica. Administrative and judicial decision-making is widely believed to be inconsistent, nontransparent, and time-consuming. 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.

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.

In March 2020, the OECD's Working Group on Bribery conducted a Phase 2 review of Costa Rica, and reported that Costa Rica recently strengthened its anti-bribery laws by introducing corporate criminal liability in 2019. The available sanctions against natural and legal persons, apart from small and medium-sized enterprises, have increased. The provision of mutual legal assistance to foreign countries has largely been prompt and effective.

However, the OECD also reported certain concerns, including loopholes in the definition of the foreign bribery offense and enforcement issues. The Public Prosecution Service and the Attorney General's Office are both involved in foreign bribery enforcement, which may duplicate efforts and jeopardize cases. Costa Rica also needs to ensure that factors such as national economic interest do not influence the sanctioning of foreign bribery cases. It should also improve guidance and transparency for non-trial resolutions and collaboration agreements.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was $673 million in 2020, a 4.3 percent increase ($28 million) over 2019. U.S. goods exports to Cote d'Ivoire were $208 million, down 25.3 percent ($70 million) from the previous year. Corresponding U.S. imports from Cote d'Ivoire were $881 million, down 4.6 percent. Cote d'Ivoire was the United States' 119th largest goods export market in 2020.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Cote d'Ivoire's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2019 (latest data available). Cote d'Ivoire's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 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 an average WTO bound tariff rate of 11.2 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Cote d'Ivoire applies: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 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 Ivoirian 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.

Taxes

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 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 (between 14 percent and 40 percent), tobacco (38 percent), cigarettes (38 percent), certain textile products (20 percent), and petroleum products (between 20 percent and 44 percent). A tax of CFA 1000 (approximately $1.74) 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 expired in 2001.

Cote d'Ivoire levies a one percent charge 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.

Non-Tariff Barriers

A number of items are subject to import prohibitions, restrictions, or prior authorization, including: certain petroleum products, animal products, flour, live plants, seeds, arms and munitions, plastic bags, distilling equipment, saccharin, and analog televisions. Textile imports are subject to some authorization

requirements by the External Trade Promotion Office. In January 2020 Cote d'Ivoire banned the import of sugar from all sources for five years.

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.

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 first be examined by a pre-shipment inspection company for compliance with relevant requirements. Three European companies, BIVAC (affiliated with the French group Bureau Veritas) and the Swiss-based firms COTECNA and SGS, are contracted to carry out pre-shipment inspections of goods imported into Cote d'Ivoire with a value exceeding CFA 1 million (approximately $1,738). A certificate of compliance from one of these firms is required to clear customs.

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 Cote d'Ivoire is a concern, as companies complain that regulations are issued only as final measures without a clear process or period for public comment on draft regulations. Cote d'Ivoire has not consistently notified draft technical regulations to the WTO Committee on Technical Barriers to Trade since becoming a WTO Member.

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 National Bureau of Technical and Development Studies, 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 Public Procurement Department is a centralized office of public tenders in the Ministry of Finance, to help ensure compliance with international bidding practices. Cote d'Ivoire's update to its public procurement code in 2019 introduced electronic procurement bidding, provisions on sustainable public procurement, and promotion of socially responsible vendors as a bidding qualification. While the public procurement process is open by law, in practice it is often opaque and government contracts are occasionally awarded outside of public tenders. Some foreign companies appear to secure contracts as a result of longstanding relationships with government officials or aided by partnerships with Ivoirian commercial entities that have close connections to the Government. During negotiations on a tender, the Government

at times imposes local content requirements on foreign companies. In other instances, although there are specific regulations governing the use of sole source procurements, 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 cite corruption as an obstacle to a transparent understanding of procurement decisions.

As part of good governance practices and in compliance with international standards, the National Authority for Regulation of Public Procurement (ANRMP) in August 2020 began an audit of 200 sole-source public tenders awarded by eight ministries from 2014 to 2017. In October 2020, ANRMP launched a similar audit of 400 public contracts awarded under 2019 management. ANRMP conducted a similar audit in 2014, which found that a high proportion of all government procurements were sole-sourced rather than competitively bid. The 2014 audit further found that the sole-sourced procurements contained many irregularities, especially with regard to documentation, including a lack of documentation altogether.

At times, the Government has cancelled or changed the publicly known result of a tender without giving a bidder 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 not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since July 2020.

INTELLECTUAL PROPERTY PROTECTION

Inadequate enforcement of intellectual property (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.

Cote d'Ivoire has restrictions on the registration of foreign nationals by the chartered accountants' association (which also requires Ivoirian nationality). The government restrictions do not apply to foreign nationals who 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 payments require the additional approval of the Ministry of Finance and Economy and the Ministry of Commerce and Industry. The clearance procedure for planned investments, if the investor seeks tax breaks, is time consuming and confusing. Even when companies have complied fully with the requirements, the Tax Office sometimes denies tax exemptions with little explanation, giving rise to accusations of favoritism. In August 2018, the Government adopted a new investment code that prioritizes agriculture, agro-industry, health, and hospitality, and that links some incentives to productive and sustainable investments, and the promotion of local content – namely local job creation, subcontracting with local companies (especially small- and medium-sized enterprises), and 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 sometimes used to speed up the slow bureaucratic process or to secure a tender. The High Authority of Good Government (HAGB), established in 2013, is responsible for executing the national plan to fight corruption. However, it is solely an investigative agency. While HAGB can transmit complaints to government officials, the agency has no power to enforce anti-corruption laws and regulations. Corruption and lack of capacity in the judicial and security services 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. These situations are further complicated by conflicting modern and traditional concepts of land tenure, the latter including communal ownership.

Export Policies

Cote d'Ivoire provides incentives and support funds to local cashew processors to increase processing capacity and sustain the competitiveness of the sector. The Government also encourages domestic processing of other agricultural products such as cocoa, rubber, palm oil, coffee, and other raw materials by imposing a higher export tax on the unprocessed commodities than on the processed ones.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with Dominican Republic was $2.4 billion in 2020, a 33.6 percent decrease ($1.2 billion) over 2019. U.S. goods exports to Dominican Republic were $7.6 billion, down 17.3 percent ($1.6 billion) from the previous year. Corresponding U.S. imports from Dominican Republic were $5.2 billion, down 6.6 percent. Dominican Republic was the United States' 32nd largest goods export market in 2020.

U.S. exports of services to Dominican Republic were an estimated $2.7 billion in 2019 and U.S. imports were $5.5 billion. Sales of services in Dominican Republic by majority U.S.-owned affiliates were $1.2 billion in 2018 (latest data available). There were no sales of services in the United States by majority Dominican Republic-owned firms in 2018.

U.S. foreign direct investment in Dominican Republic (stock) was $2.6 billion in 2019, a 20.4 percent increase from 2018. U.S. direct investment in Dominican Republic is led by manufacturing, information services, and wholesale trade.

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Under the CAFTA–DR, as of January 1, 2015, 100 percent of U.S. originating consumer and industrial goods have entered the Dominican Republic duty free. 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. 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 (CLQ), some dairy products, and rice by 2025. Tariff-rate quotes (TRQs) permit duty-free access during the tariff phase-out period for specified quantities of different agricultural products. The remaining products with TRQs include CLQ, non-fat dry milk (NFDM), yogurt, and mozzarella cheese, with the duty-free quantity progressively increasing during the tariff phase-out period.

The Dominican Republic is required under the CAFTA–DR to make TRQs available on January 1 of each year. However, it often does not issue quota allocations until several months into the year. In addition, the

issuance of out-of-quota import licenses for sensitive products, which allow importers to exercise their import rights, have frequently been delayed and/or not issued at all.

The Ministry of Agriculture has made substantial improvements to its administration of TRQs, but in recent years there have still been instances where TRQs were issued only after significant delays. For 2017, TRQs were issued on time, 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, powdered milk, and bean imports, to certain months of 2017. The Dominican Republic is required under the CAFTA–DR to make TRQs available on January 1 of each year. The Dominican Republic monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

Non-Tariff Barriers

Import Licensing

The Dominican Ministry of Agriculture continues to administer the issuance of import licenses as a means to manage trade in sensitive commodities. This is a concern for sensitive agricultural goods such as dry beans, hatching eggs, and dairy products and intermittently with respect to other products as well. In August 2004, a side letter was signed under the CAFTA–DR by the United States and the Dominican Republic, affirming that the Dominican Republic would not grant or deny import licenses based on unjustified sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. The United States will continue to monitor and raise any concerns regarding this matter with Dominican authorities.

The Dominican Republic maintains a ban on imports of all used vehicles more than 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 frequently has challenged the eligibility of those vehicles for preferential tariff treatment under the Agreement, citing technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address complaints received from importers of used cars of U.S. manufacture.

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) constitutes a barrier to trade. Although certified mills produce U.S. steel rebar, 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 been 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.

The United States has repeatedly engaged the Dominican Government on this issue, and raised the issue on the margins of the World Trade Organization (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. While the Dominican Republic has yet to reform the regulations

and practices to ensure that imported rebar is treated no less favorably than domestically manufactured rebar, Dominican authorities have worked with the U.S. steel industry to accept test results and certify rebar before export so that products may clear customs and enter commerce in the Dominican Republic without delay.

Food Labeling

On July 12, 2016, the Dominican Government issued a statement announcing the enforcement of NORDOM 53, a domestic 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 has been selective, and products with sticker labels placed locally continue to be sold in the local market. However, domestic industry representatives continue to push the government to actively enforce this regulation. The United States will monitor the situation and encourage the government to enforce its regulations in a manner that does not distort trade.

Sanitary and Phytosanitary Barriers

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, which is not required under Dominican health law. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure. However, the practice of requiring business confidential information, such as the exact product formulas, continues to make registration difficult for many products.

GOVERNMENT PROCUREMENT

U.S. suppliers have complained that Dominican Government procurement is not 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. In an MOU signed by the United States and the Dominican Republic in October 2020, the Dominican Government expressed its intent to prioritize passage of new legislation on public procurement and implement it in a manner that is timely, transparent, and consistent with international best practices. The United States will continue to monitor the Dominican Republic's procurement practices for consistency with CAFTA–DR's 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. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

The Dominican Republic remained on the Watch List in the 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 continues to urge the Dominican Republic to develop a mechanism to

coordinate enforcement activities and to ensure that its enforcement agencies are appropriately funded and staffed. The United States will continue to work with the Dominican Republic to address these and other issues.

OTHER BARRIERS

Bribery and Corruption

U.S. stakeholders have expressed concerns that corruption in the Dominican Government, including in the judiciary, continues to constrain successful investment in the Dominican Republic. Administrative and judicial decision-making is widely believed to be 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. Since taking office in August 2020, the administration of President Abinader has committed to reforms to strengthen transparency and combat corruption across the Dominican Government. The Dominican Republic is a member of the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $1.7 billion in 2020, a 19.5 percent increase ($276 million) over 2019. U.S. goods exports to Ecuador were $4.2 billion, down 23.3 percent ($1.3 billion) from the previous year. Corresponding U.S. imports from Ecuador were $5.9 billion, down 14.6 percent. Ecuador was the United States' 43rd largest goods export market in 2020.

Sales of services in Ecuador by majority U.S.-owned affiliates were $1.1 billion in 2018 (latest data available), while sales of services in the United States by majority Ecuador-owned firms were $20 million.

U.S. foreign direct investment in Ecuador (stock) was $619 million in 2019, a 14.3 percent decrease from 2018. U.S. direct investment in Ecuador is led by mining, finance and insurance, and wholesale trade.

TRADE AGREEMENTS

The United States–Ecuador Trade and Investment Council Agreement

The United States and Ecuador signed a Trade and Investment Council Agreement (TIC) in 1990. There were several TIC meetings held throughout 2020 to resolve a number of trade irritants. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ecuador.

On December 8, 2020, the United States and Ecuador signed a Protocol on Trade Rules and Transparency in Quito, Ecuador. The new Protocol is an update to the TIC, and is an integral part of the Agreement. The Protocol contains provisions that establish high standards for increased trade facilitation, transparency in regulatory development, anti-corruption policies, and cooperation and information sharing to benefit small and medium-sized enterprises. The Protocol establishes high-level trade rules that will improve opportunities for bilateral trade and investment in all sectors.

IMPORT POLICIES

Tariffs and Taxes

Since May 2017, the Government of Ecuador has sought to roll back tariff and non-tariff barriers imposed by the prior Ecuadorian Administration. To improve Ecuador's economic competitiveness, the Ecuadorian Government has lowered tariffs on many products, particularly on intermediate goods and electronics.

Tariffs

Ecuador's average Most-Favored-Nation (MFN) applied tariff rate was 12.3 percent in 2019 (latest data available). Ecuador's average MFN applied tariff rate was 18.2 percent for agricultural products and 11.3 percent for non-agricultural products in 2019 (latest data available). Ecuador has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.7 percent.

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at or below 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 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. During 2019, the United States encouraged Ecuador in 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. In 2020, Ecuador extended the exemptions for five years. The United States will continue to work with Ecuador to exempt these products from import tariffs permanently.

Information and Communications Technologies

In October 2019, the Ecuadorian Government eliminated tariffs that had ranged from 10 percent to 15 percent on imports of cellphones, computers, tablets, and laptops; the tariff elimination does not, however, cover other information and communication technology (ICT) goods, such as modems, routers, or wireless equipment.

The Foreign Trade Committee (COMEX) approved Resolution 021 on October 16, 2020, to change the tariff rate that applies to imported televisions. The measure specifically adjusts the tariff for televisions that are over 50 inches and up to 75 inches. The tariff, which was 20 percent *ad valorem*, is now a compound tariff of 5 percent plus a dollar value per unit of $158.14. Televisions over 75 inches are still subject to a 20 percent tariff.

Raw Materials and Industrial Capital Goods

COMEX Decree 023, issued in October 2019, reduced 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 on these products now range from zero percent to 18.75 percent.

COMEX Resolution 019, issued in September 2020, established the procedure for a tariff waiver on additional capital goods and raw materials that support productive development in the country.

Sports Equipment

COMEX Resolution No. 019-201, effective August 28, 2019, decreased tariff rates for certain 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 is 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), are subject to a zero percent tariff, down from previous tariffs ranging from 15 to 30 percent. To avail of these lower tariff rates, importers must file a request with the Secretariat of Sports for each individual import entry.

Taxes

Consumer Goods

Ecuador imposes 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. Ecuador provides a waiver of the $42 fee for packages sent by Ecuadorian residents abroad, up to a limit of 12 packages or $2,400. The Ecuadorian Post Office imposes a $3.51 fee plus a VAT on all international online shipments weighing up to 2,000 grams.

Non-Tariff Barriers

Import Bans and Restrictions

The Ministry of Agriculture and Livestock (MAG) 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, according to stakeholders, these committees seek to block imports to provide advantages to domestic production.

Import Licensing

Since 2013, COMEX and MAG have imposed a mandatory, cumbersome process for allocating import licenses for 55 agricultural tariff lines, including dairy, potatoes (including French fries), beef, pork, chicken, turkey, soybean meal, beans, sorghum, and corn. Since 2015, MAG has imposed a more burdensome framework whereby 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, meat, 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 concerns regarding Ecuador's import licensing process in light of its impact on trade and Ecuador's trade commitments.

Lubricants

In October 2020, COMEX-020-2020 amended Annex 1 of COMEX Resolution 450 by incorporating a pre-shipment control document—the "Automatic Import License for Greases and Lubricants"—for tariff codes 2710.19 and 2710.20. The Energy and Non-Renewable Natural Resources Regulation and Control Agency (ARCERNNR) will establish the requirements and procedures for obtaining the import licenses and will issue the licenses. The licensing requirement stems from the "Regulation for Authorization of Activities for the Production and Marketing of Greases and Lubricants" issued pursuant to Ecuador's hydrocarbons law on May 2017.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Ceramic Tiles

On September 11, 2020, the Ecuadorian Institute of Standards (INEN) updated its regulation RTE033 (3R), which established marking and labeling requirements and conformity assessment procedures for ceramic tiles. This third revision of the regulation maintained the excessive requirement that both tiles and their primary packaging be labeled with the importer's identification number (known as the RUC), the brand, country of origin, batch number, fabrication date, dimensions, weight, and other technical information.

Customs Barriers and Trade Facilitation

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

Footwear and Accessories

Ecuador previously required 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 worked with other Andean Community members to issue a regional labeling policy for footwear, apparel, and accessories, among others, based on international standards. The regional labeling policy entered into effect in Ecuador in November 2020, per Andean Community Resolution 2107.

Cosmetics

COMEX Resolution 002, issued in January 2020, eliminated conformity assessment certificates for eight regulations for the imports of cosmetic products, equipment for acoustic or visual signaling, spark plug wires, personal hygiene products, sanitary napkins, and diapers.

Incandescent Lightbulbs

COMEX Resolution 007 issued in July 2020, prohibits imports of incandescent lightbulbs (HS code 8539.22.90.00). COMEX will assign quotas to importers that justify the importation of incandescent lamps on technical grounds, in the ranges from 25W to 150W. These include those intended for non-residential uses – such as industrial, agricultural, fishing and others – and for which there exist no energy saving substitutes.

Standards

During 2019 and 2020, INEN simplified cumbersome import processes of several products through the revision or elimination of over 300 technical regulations to comply with international standards. INEN expects to finalize revisions by mid-2021.

Processed Foods Facility GMP Registration Requirements

On September 9, 2020, Ecuador's National Agency for Sanitary Regulation, Control, and Observation (ARCSA), under the authority of Ecuador's animal and plant health authority AGROCALIDAD, notified the WTO Committee on Technical Barriers to Trade of a Sanitary Technical Regulation that would establish new registration requirements on processing plants for consumer-oriented food intended for retail. The numerous concerns arising from this technical regulation include the requirement for duplicative certificates, apostillization or the validation of certificate documents by Ecuadorian consulates, and the approval of Good Manufacturing Practices certifiers by Ecuadorian authorities. The United States submitted comments to Ecuador on December 8, 2020. In 2020, the United States exported $76 million in consumer-oriented food products to Ecuador.

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 MAG, including AGROCALIDAD, the Undersecretary of Commercialization, and the Undersecretary of Agriculture 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 including from consultative committees of domestic producers that often block or impede import competition.

In addition to prior authorization, COMEX Resolution 019 of 2014 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, including products of animal origin.

Establishment of Registration Requirements

AGROCALIDAD Resolution 115 of June 2019 and Resolution 003 of 2016 require registration of foreign establishments that export animals or animal products and of products to be fed or applied to animals. 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 issue. 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

Government procurement in Ecuador can be cumbersome and nontransparent. Payments can often be delayed without explanation despite provision of goods and services and proper work orders and receipts. The lack of transparency poses a risk that procuring entities will administer a procurement to the advantage

of a preferred supplier. 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."

In May, 2020, the Ecuadorian President issued Executive Decree 1033 reforming the Public Procurement Regulations and assigning the National Public Procurement Service (SERCOP) a leadership role in the implementation of a new Unified System for the Purchase of Medicines and Strategic Goods for the Health Sector (the "Unified System"). This decree provides for unifying and reorganizing the medical supply and distribution system nationwide. The technology-based system aims to provide full traceability, transparency, and accountability from prescription through consumption, while optimizing the distribution and storage of medicines using a privately contracted, specialized logistics operator. Although a positive step, the Ecuadorian pharmaceutical industry reports that the proposed system needs further adjustments, including to ensure qualified bidders, product traceability, and realistic timelines for implementation. The system, which was in planning stages since October 2019, will be fully operational in 2021.

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, but has been an observer to the WTO Committee on Government Procurement since June 2019.

INTELLECTUAL PROPERTY PROTECTION

Ecuador remained on the Watch List in the Special 301 Report. Enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak. La Bahia Market in Guayaquil is on the 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 IP matters. In 2018, the Ecuadorian National Intellectual Property Service (SENADI) published for public comment draft regulations related to the COESC. U.S. stakeholders continue to note that the COESC legislation could negatively affect IP protections and foreign investment in Ecuador. SENADI continues to consider amendments to the COESC and to review feedback from stakeholders.

The United States has engaged with Ecuador on IP issues, including with respect to revisions to the COESC and any implementing regulations related to the COESC, and will continue its engagement through the Special 301 process and the TIC.

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, Ecuador's National Telecommunications Corporation (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.

BARRIERS TO DIGITAL TRADE

Data Localization

The National Assembly is considering a personal data protection law, which includes a requirement to obtain authorization from the supervisory authority for the international transfer of personal data. The United States urges Ecuador to ensure that this legislative proposal does not place restrictions on the cross-border transfer of data or otherwise create barriers to trade. The law could impact businesses through high fines levied on data protection infractions. According to the current draft, minor infractions would incur a penalty of three to nine percent of revenues, while major infractions would incur a penalty of ten to 17 percent of revenues.

INVESTMENT BARRIERS

Ecuador's investment climate remains marked by uncertainty, owing to unpredictable and frequently restrictive economic policies. The Ecuadorian Government 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, but the sunset provisions of the agreement protect U.S. 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. Presidential Decree 449 of July 2018 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 U.S. stakeholders, prohibitions on commingling (mixing of petroleum from multiple companies in a pipeline for transport) in Ecuador's petroleum sector limit the productive capacity of oil companies by roughly 10 percent, inhibiting investment. A restrictive environmental permitting process requires six or more months for oil projects and an average of 18 months for mining projects. In 2019, the Environment Ministry reformed regulations to streamline the process, but challenges remain for companies given insufficient and untrained ministry staff tasked with processing the permits.

The 2015 Mining Law allows the state to grant mining exploitation rights to private and foreign entities, depending on national interests. Between 2015 and 2017, the government established non-discriminatory incentives for mining sector investments, including fiscal stability agreements, limited VAT reimbursements, and remittance tax exceptions. However, investment in the mining sector faces legal uncertainty because of the Ecuadorian Constitutional Court's September 2020 ruling that allows local referendums that seek to ban mining in areas over which the national government has regulatory authority. The ruling, which upholds the local community's right to self-determination, does not resolve whether that local right to self-determination supersedes the national government's constitutional authority to regulate mining on a national level. As a result of the ruling, 43 mining concessions could be subject to local referendums.

The public-private partnership (PPP) law of 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 PPP agreement with the Ecuadorian Government since passage of the law. The Ministry of Economy and Finance drafted new PPP regulations in 2020, which await presidential approval.

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 Ecuadorian Government has made anti-corruption efforts a priority. In addition, companies involved in electronic commerce have noted that

laws and regulations governing the 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 $2.6 billion in 2020, a 10.7 percent increase ($249 million) over 2019. U.S. goods exports to Egypt were $4.8 billion, down 13.2 percent ($725 million) from the previous year. Corresponding U.S. imports from Egypt were $2.2 billion, down 30.9 percent. Egypt was the United States' 40th largest goods export market in 2020.

Sales of services in Egypt by majority U.S.-owned affiliates were $1.1 billion in 2018 (latest data available). There were no sales of services in the United States by majority Egypt-owned firms in 2018.

U.S. foreign direct investment (FDI) in Egypt (stock) was $11.0 billion in 2019, a 2.0 percent increase from 2018. There is no information on the distribution of U.S. FDI in Egypt.

TRADE AGREEMENTS

The United States–Egypt Trade and Investment Framework Agreement

The United States and Egypt signed a Trade and Investment Framework Agreement (TIFA) on July 1, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Egypt.

IMPORT POLICIES

Tariffs

Egypt's average Most-Favored-Nation (MFN) applied tariff rate was 19.0 percent in 2019 (latest data available). Egypt's average MFN applied tariff rate was 65.0 percent for agricultural products and 11.6 percent for non-agricultural products in 2019. Egypt has bound 99 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 36.6 percent.

On September 11, 2018, Egypt raised tariffs on 5,791 products through Presidential Decree No. 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 many U.S. products face in Egypt vis-à-vis EU goods given that such EU products benefit from preferential rates granted under the EU-Egypt Association 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 comprise 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.

Non-Tariff Barriers

Import Licensing

On February 18, 2019, Egypt's Prime Minister issued Decree No. 412/2019 establishing the Executive Regulations for the National Food Safety Authority (NFSA), created under Law No. 1/2017 in January 2017. The NFSA must register and approve all nutritional supplements, specialty foods, and dietary foods according to NFSA Decision No. 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.

Since 2003, Egypt has only permitted imports of whole, frozen poultry. Egypt does not issue import licenses for poultry parts and offal, which acts as a de facto ban on U.S. chicken leg quarters to Egypt. The United States raised this issue at TIFA meetings in December 2017, May 2018, and April 2019. Egypt has concerns that the processing of chicken leg quarters from all origins does not meet halal requirements and the United States raised this issue during the WTO Committee on Technical Barriers to Trade meeting in 2018. In September 2019, Egypt's General Office of Veterinary Services issued a suspension of all imports of poultry and poultry products.

On August 25, 2019, Egypt's Parliament passed Law No. 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 suspect shipments for inspection. This affects the Customs Authority's capability to process manifests and entry documentation. 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 employs reference pricing when assessing duties. The effort of U.S. businesses to challenge the assessment of these duties before Egypt's Customs Valuation Committee has not been resolved. The U.S. Government has raised and will continue to raise these U.S. business concerns through the TIFA dialogue. The United States has proposed concluding a Customs Mutual Assistance Agreement with Egypt to facilitate the exchange of information and technical assistance to help enhance the efficiency of customs procedures and operations.

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 of these goods have declined by 52 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. Egyptian law also 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. The United States has raised Egypt's non-recognition of U.S. federal motor vehicle safety standards (FMVSS) in TIFA meetings in December 2017, May 2018, and April 2019. During the 2019 TIFA meeting, Egypt indicated its willingness to consider recognition of U.S. FMVSS, including through the U.S. Highway Traffic Safety Administration's Blue Ribbon Letter program. Since then, the United States and Egypt have held a number of technical consultations and discussions to assist Egypt in working through its standards concerns.

Foreign Manufacturers Registration

Egyptian Ministerial Decree No. 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, including at the TIFA meeting in April 2019.

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 or adhere to many international standards for numerous animal-based products. Egypt also blocks the import of certain U.S. agricultural products based on Egypt's claims regarding health and food safety, while maintaining other non-tariff barriers.

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. However, after bilateral technical meetings in 2020, CAPQ indicated that it expects to provide market access for U.S. seed potatoes by the 2021 season.

Garden Strawberry Plants for Planting and Date Palm Offshoots

In 2019, Egypt stopped issuing import permits for garden strawberry plants and date palm unless the plant material is sourced from an area free of the bacterium *Xylella fastidiosa*. Egypt considers garden strawberry and date palm to be hosts; however, the claim is not supported by scientific literature. From 2013-2018, the United States shipped more than 2.1 million strawberry plants to Egypt without phytosanitary concerns.

GOVERNMENT PROCUREMENT

In July 2018, the Egyptian Parliament passed a law on government procurement (No. 182), which requires procurement decisions be made in a competitive and transparent manner and consider not only technical requirements 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 at least 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 Special 301 Report. While Egypt has taken steps to improve intellectual property (IP) rights enforcement, including shutting down a number of online illegal streaming websites and increasing raids against offering counterfeit goods, concerns remain regarding the widespread use of counterfeit goods and piracy, including software, music, unlicensed satellite TV broadcasts, and videos. Deterrent-level penalties for IP violations 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 the 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 majority 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) (Law No. 180/2018) 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 expand 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.

Egypt's Personal Data Protection Act (Law No. 151/2020), signed into law in July 2020, requires licenses for cross-border data transfers. The United States is monitoring the implementation of this law.

INVESTMENT BARRIERS

Egypt implemented an investment law (No. 72/2017) in October 2017 to address longstanding complaints of foreign investors. The law allows foreign investors to operate sole proprietorships and partnerships. In addition, the law allows firms to increase the number of non-nationals working at any business from 10 percent of the workforce to 20 percent. Foreigners may act as importers for their own businesses, albeit with certain limitations on the items that may be imported by the business and the purposes for which they may be imported.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $711 million in 2020, a 20.0 percent decrease ($178 million) over 2019. U.S. goods exports to El Salvador were $2.6 billion, down 21.8 percent ($735 million) from the previous year. Corresponding U.S. imports from El Salvador were $1.9 billion, down 22.5 percent. El Salvador was the United States' 54th largest goods export market in 2020.

U.S. exports of services to El Salvador were an estimated $1.5 billion in 2019 and U.S. imports were $777 million. Sales of services in El Salvador by majority U.S.-owned affiliates were $1.5 billion in 2018 (latest data available). There were no sales of services in the United States by majority El Salvador-owned firms in 2018.

U.S. foreign direct investment in El Salvador (stock) was $3.4 billion in 2019, a 19.4 percent increase from 2018.

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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 U.S. originating consumer and industrial goods enter El Salvador duty free. 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. fiber, yarn, fabric, and apparel manufacturing companies.

In addition, 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. 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, TRQs will permit duty-free access for specified quantities as the tariffs are eliminated, with the in-quota amount expanding during this time. El Salvador 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 the timely issuance of these permits.

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). 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. Stakeholders have raised concerns that the distinctions drawn between types of distilled spirit or tariff classification do not have a sound basis and may result in lower tax rates on locally-produced spirits compared to imported products.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

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. While designed to facilitate cross-border movements, the procedures have resulted in considerable delays that have caused 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. In October 2019, the National Trade Facilitation Committee (NTFC), comprised of government and private sector representatives, 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 began implementing 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. Implementation has not advanced since this announcement. Industry representatives urge increased coordination and integration among regional customs agencies to avoid duplicative inspections and delays in customs clearances.

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, and no more than 8 days to issue a final resolution and 4 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 agreed in 2019 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 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. 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.

In 2020, the National Medicines Directorate (DNM) changed the procedure to register cosmetics and added a fee for the past-registration of cosmetics and hygiene products, prompting U.S. industry to express concerns about additional costs and burdensome procedures. The United States will continue to discuss options to expedite registrations with DNM.

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. 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 United States 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.

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 at certified private laboratories during vacation periods in El Salvador. The Ministry of Health, in consultation with U.S.

officials, is reviewing laboratory testing requirements to determine to what extent additional flexibility would be permissible under the existing Health Code.

The Salvadoran Government requires that grain shipments be fumigated at importers' expense unless they are accompanied by a United States Department of Agriculture (USDA) certificate stating that the grain is free of weed seeds, including *Tilletia Barclayana* (a rice fungus). However, as there is no chemical treatment that is both practical and effective against this plant pathogen, USDA cannot issue these certificates. El Salvador has not notified the WTO of this requirement.

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. However, the CAFTA–DR contains provisions on government procurement.

INTELLECTUAL PROPERTY PROTECTION

To implement its CAFTA–DR obligations, 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, and the unlicensed use of software. 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 (IP) 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

U.S. stakeholders have expressed concern that corruption in the Salvadoran Government, including in the judiciary, continues to constrain successful investment in El Salvador. Administrative and judicial decision-making is widely believed 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 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. El Salvador is a member of the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $382 million in 2020, a 13.5 percent decrease ($60 million) over 2019. U.S. goods exports to Ethiopia were $907 million, down 10.5 percent ($106 million) from the previous year. Corresponding U.S. imports from Ethiopia were $525 million, down 8.2 percent. Ethiopia was the United States' 76th largest goods export market in 2020.

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. Ethiopia is not a Member of the World Trade Organization (WTO), and has accordingly no bound tariffs.

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, but some products and services are exempted from VAT. These exempted areas include 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.

Non-Tariff Barriers

Ethiopia has restrictions on the importation of used clothing; arms and ammunitions (except by the Ministry of Defense); used/refurbished medical equipment; 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, an import business license, and a commercial bank permit for currency exchange before bringing products into the country. Obtaining a commercial bank permit for currency exchange 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 often delays of several months or even over a year 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. Logistics costs comprise approximately 22 to 27 percent of final costs for many products. 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 Ethiopian Government has slated the logistics sector for liberalization. Ethiopia is actively seeking to develop alternative transport corridors to additional ports in Eritrea and Somaliland, and several inland dry ports have been slated for privatization.

Foreign Exchange Controls

The Ethiopian Central Bank (National Bank of Ethiopia - 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 in conjunction with the NBE. The NBE carefully monitors the foreign exchange holdings of these banks and closely manages the exchange rate. Ethiopia signed a three-year, $2.9 billion agreement with the International Monetary Fund (IMF) in December of 2019, a central tenet of which is the harmonization of the official and black-market exchange rates.

Prior to 2016, the NBE implemented five to six percent depreciation of the domestic currency per year. However, in October 2017, the NBE unexpectedly devalued the domestic currency by 15 percent following a serious foreign currency shortage. Between October 2019 and October 2020, the NBE depreciated the official exchange rate by more than 27 percent. The NBE 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 NBE. 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 2020, Ethiopia implemented a national Sanitary and Phytosanitary Standards (SPS) strategy and it remains in effect until 2024. The SPS strategy is geared towards ensuring public health and improving market access. Ethiopia has also implemented basic laws and regulations to address key SPS issues related to plant health, animal health, and food safety. Additionally, the government has established a national SPS committee to carry out certain technical advisory functions. Ethiopia is also exerting concerted efforts to harmonizing its SPS standards with regional economic blocs, such as the Common Market for Eastern and Southern Africa (COMESA), to lay the foundation for broader coordination with countries in the region. Additionally, Ethiopia is undertaking investments to enhance its SPS infrastructure by establishing national and regional labs, quarantine stations, and standards for quality assurance.

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 has been carrying out the second round of Bt maize field trials since 2019. 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 to effectively compete 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.

As Ethiopia is not a WTO Member, it 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 (WIPO) and has demonstrated an interest in strengthening its IP regime. As Ethiopia is not a WTO Member, it has no obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Ethiopia 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 goods remains inadequate. 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. As part of its broader economic reform agenda, Ethiopia passed a bill in June 2019 that

allows foreign nationals of Ethiopian origin to invest in the banking and insurance sectors. The banking sector is composed of 17 private commercial banks and two public banks. In October 2020, Ethiopia's first interest free Islamic bank, Zamzam, obtained its license to operate. Few international banks maintain representative offices and all trade financing is required by law to 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 must 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.

The domestic insurance and reinsurance industry 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

A new law, passed in June 2019, established an independent telecommunications regulator, the Ethiopian Communications Authority, 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. Additionally, in November 2020 the government released the bid documents for an auction process which will allow foreign mobile network operators to bid on two full-service telecom licenses. The government plans to have awarded these licenses by March 2021. As of March 2021, EthioTelecom still 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. The new investment law, passed on January 30, 2020, exclusively reserves banking, insurance and microfinance, transmission and distribution of electricity and retail and wholesale trade, among other sectors, to domestic investors. It also allows up to 49 percent ownership of logistics companies by foreign firms. Foreign investors can jointly invest (holding minority stakes) with domestic investors in areas such as freight forwarding and shipping, domestic air transportation services, cross country public transport services, advertisement and promotion, and accounting and auditing services. Investment in defense industry, import and export of electric energy, international air transportation services, and postal services 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. Despite the remaining restrictions, the new investment law represents progress in terms of sectors open to foreign investment. 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 SOEs. 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. Ethiopia 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 2021.

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, since 2018 the government has arrested several current and former government officials, charging them with corruption and embezzlement allegedly committed during the procurement process 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 an 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 ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and deposited its instrument at the United Nations in 2020. Ethiopia is in the process of reforming the country's Commercial Code to bring it in line with international best practices. The draft legislation, which is currently awaiting approval by the parliament, appears to address many concerns raised by the business community, including a proposal to establish a commercial court under the regular court system to improve resolution of commercial disputes.

EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with European Union (27) was $183.4 billion in 2020, a 0.5 percent decrease ($913 million) over 2019. U.S. goods exports to European Union (27) were $232.1 billion, down 13.3 percent ($35.6 billion) from the previous year. Corresponding U.S. imports from European Union (27) were $415.5 billion, down 8.1 percent.

U.S. exports of services to European Union (27) were an estimated $200.3 billion in 2019 and U.S. imports were $145.9 billion. Sales of services in European Union (27) by majority U.S.-owned affiliates were $560.3 billion in 2018 (latest data available), while sales of services in the United States by majority European Union (27)-owned firms were $409.9 billion.

U.S. foreign direct investment in European Union (27) (stock) was $2.4 trillion in 2019, a 2.8 percent increase from 2018. U.S. direct investment in European Union (27) is led by nonbank holding companies, manufacturing, and finance and insurance.

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. 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 5.1 percent in 2019 (latest data available). The EU's average MFN applied tariff rate was 12.7 percent for agricultural products and 3.9 percent for non-agricultural products in 2019 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 5.1 percent.

Although the EU's tariffs are generally low for non-agricultural goods, some EU tariffs are high, 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 2021.

Non-Tariff 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 for innovation. 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. pharmaceuticals exports to Austria were worth over $1.72 billion in 2019 (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 therefore can negatively impact innovation. The streamlining of the statutory social insurance carrier structure from nine provincial units to one federal entity has not yet led to changes in reimbursement policies sought by U.S. pharmaceutical companies.

Belgium: U.S. companies identified several policies affecting market access, including a turnover tax, a crisis tax, a marketing tax, and a clawback tax. In addition, industry reports that domestically manufactured medicines are permitted a price premium of up to 10 percent on the manufacturing cost component when calculating their manufacturer's selling price. Imported products, however, are only eligible for up to a 5 percent price premium. The United States continues to highlight the need for a continued dialogue with the Belgian 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. The United States will continue to engage with companies and the Czech Government on this issue and urge that pricing decisions be made transparently and include meaningful stakeholder input. U.S. companies have also voiced concerns over their inability to offer innovative medicines for rare diseases on the Czech market. A new system to address this issue has been proposed through draft legislation currently in the Czech parliament.

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 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 566 days after marketing authorization, compared to the 180 days required by EU law in 2001. According to industry, the French pharmaceutical federation Les Enterprises du Medicament, which includes U.S. firms, and the French Government have signed an agreement to shorten the reimbursement process. In addition, the French Government announced that it would reduce the length of the delays and meet the 180-day timeline by 2022.

Greece: Pharmaceutical industry stakeholders face policies such as clawbacks, 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. The Greek Government passed reform measures to ease the burden on the pharmaceutical industry, including legislating an increase in the budget for vaccines with an exemption from clawbacks and abolishing a mandatory 25 percent fee for new pharmaceutical products entering the market. However, clawbacks continue to be a financial burden for the industry. U.S. pharmaceutical companies are in contact with the Greek Government and hope to establish a memorandum of understanding to collaborate on further structural reforms over the next three years.

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 for making changes to the list of drugs approved for reimbursement, cause considerable unpredictability in the Hungarian market. It can take several years before patients have access to innovative products. Pharmaceutical industry stakeholders note the lack of opportunity to provide input into the decision-making process.

Italy: U.S. healthcare companies face an unpredictable business environment in Italy, which includes highly variable implementation of complex pricing and reimbursement policies, including a clawback system. Pharmaceutical companies pay any clawback amount to the Italian Drug Agency (AIFA), which is also in charge of calculating any overspending and collecting any return payments.

In addition, U.S. companies have expressed concerns as to the clawback system as it relates to public hospital pharmaceutical purchases. Specifically, if the Italian Government overspends its allotted budget for hospital pharmaceuticals, this system requires pharmaceutical companies to refund to the government 50 percent of the budget overrun through AIFA.

U.S. medical device companies have also reported uncertainty due to the government's lack of guidance in relation to the clawback system for hospital purchases of medical equipment.

In making price and reimbursement determinations, the AIFA utilizes a system of therapeutic tenders that requires patented medicines to compete against other patented medicines and generics. U.S. industry has expressed concern that price appears to be the only selection criteria utilized by AIFA, rather than taking into account such factors as quality and therapeutic efficacy. In September 2020, AIFA published draft guidelines on their pricing process. These draft guidelines include potentially useful elements on how AIFA chooses medicines used in its competitive comparisons. The United States will continue to monitor this situation.

In addition, U.S. stakeholders have raised concerns regarding reimbursement delays for pharmaceutical products and delayed payments for medical devices. For example, it can take 12 months for products to be included in the Regional Registries even after the products have received marketing approval and been

accepted for reimbursement. Moreover, the average time Italian public hospitals take to pay medical device suppliers continues to exceed the EU average as well as the maximum period permitted by EU law. Industry continues to press the Italian government to address these issues.

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 and highlights that the Irish Pharmaceutical Healthcare Association and the Irish Government are looking to put into place a new multi-annual agreement in 2021 featuring the principle of joint funding for new treatments.

Lithuania: The United States continues to engage with the Lithuanian Government regarding pharmaceutical market access issues. 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 over the lack of the opportunity for meaningful stakeholder input into the rulemaking and tendering processes, as well as the transparency of reimbursement rules for pharmaceutical products; all of which allow for enhanced business predictability. U.S. industry reports that Poland's pricing and reimbursement system is backlogged, taking more than 820 days (based on the WAIT study by the European Federation of Pharmaceutical Industries and Associations) on average from regulatory approval to patient access. A six-month suspension of the reimbursement list has made the refund process even longer, and the reimbursement budget is expected to decrease as a percentage of total National Health Fund spending, according to the recently published 2021 finance plan. 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. On October 20, 2020, the president of Poland signed into law a new Medical Fund Act, which has the potential to bring about major changes to Poland's reimbursement system. While some potential improvements appear to exist, some changes will have an unclear effect, putting unpredictable obligations on Marketing Authorization Holders. 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 exacerbate 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.

In addition, Portugal's 2020 budget introduced a special tax on the sale of medical devices with a turnover of approximately €2 million ($2.42 million), applicable to all companies and distributors, but disproportionately affecting multinationals given the sales threshold. The funds would be used to support the acquisition of innovative health technologies. The United States has raised concerns as to the negative impact of this tax on U.S. companies.

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 31 new innovative drugs to the reimbursement list in 2020. 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 Member States.

In 2020, the Romanian Government enacted changes to a clawback tax, which had reached the equivalent of 25.2 percent of total gross sales and which continues to be a challenge for U.S. stakeholders. In May 2020, the government revised the clawback tax and introduced caps based on categories: a 25 percent cap for innovative medicines, a 20 percent cap for generics, and a 15 percent cap for locally produced medicines. U.S. stakeholders welcomed the tax revision as a measure improving predictability and patient access to medicines, but continue to raise concerns regarding a lack of transparency.

Spain: Pharmaceutical industry stakeholders continue to note concerns as to cost containment measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, 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. Slovakia was a frequent source of pharmaceuticals that were re-exported by third parties 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.

Sweden: Pharmaceutical industry stakeholders have raised concerns as to an increasingly challenging and non-transparent environment in regard to pricing and reimbursement. For example, when manufacturers submit a proposed price to the Dental and Pharmaceutical Benefits Agency, the application is often either accepted or rejected in a non-transparent fashion, with restrictive appeal options.

Uranium

The EU's policies under the 1994 Corfu Declaration, a joint European Council (the 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 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)/Group of 20 (G20) Base Erosion and Profit Shifting project.

Agriculture

Bananas

Following years of disputes, beginning under the General Agreement on Tariffs and Trade (GATT) and later involving litigation under WTO dispute settlement proceedings, the United States and other countries in 2010 reached agreements with the EU to resolve complaints about successive EU banana import regimes. Beginning in 2013, a U.S. stakeholder expressed concerns about actions taken by Italian customs authorities to collect retroactive payment of customs duties due to the authorities' unilateral re-interpretation of the validity of certain EU banana import licenses under pre-2006 EU regulations. Despite a final ruling by the Italian Supreme Court against the Italian government, and an order to repay the collected duties to the U.S. stakeholder, the duties to date have not been substantially repaid.

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.

Sugar Tax

Poland: On August 25, 2020, a sugar tax was signed into law with an implementation date of January 1, 2021. While all foreign-owned companies are subject to the tax, U.S. companies operating in Poland are expected to pay a majority of these taxes as Polish companies have been exempted. The tax calls for producers and importers of sweetened beverages (drinks containing added sugar, caffeine, or taurine) and

alcohol in small bottles to pay a tax ranging from $0.14 to $0.31 per liter of the product. Exceptions include dietary supplements, infant formula, milk products, or products that have milk as their first ingredient.

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 Member State. 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 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 from, 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 (TBT) in the EU. This is attributable in part to aspects of the EU's regulatory process, including that 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 TBT Agreement are properly notified to the public. The United States regularly raises concerns, both in bilateral engagement and in the WTO TBT Committee, in cases in which notification of certain measures that may have a significant effect on trade has not taken place at an appropriate stage. EU notifications often take place 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), proposed restrictions on chemicals and their use in products are typically notified to the WTO only after scientific review committees have convened and the Commission's domestic consultations are concluded. This prevents affected parties from providing additional scientific or technical data for the optimal consumer and producer outcome. In other cases, measures are simply not notified at all, as was the case with a series of country of origin labeling (COOL) measures. The EU may also make significant changes to a proposed regulation without re-notification. 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. Finally, failure to notify measures with adequate comment periods are also observed at the Member State level, including in the case of recent French recycling labeling regulations. Improvement and greater consistency in EU and Member State notification of measures 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.

The United States is concerned that further transparency and notification issues may arise regarding various initiatives under the European Green Deal, announced in December 2019. Many of the initiatives listed under the European Green Deal have the potential to create significant and unnecessary trade barriers for U.S. companies in ways that may not help the EU meet its aims of a more sustainable economy. In 2020, the United States raised questions bilaterally about the various European Green Deal initiatives and proposals for future legislation.

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 harmonized 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.

EU product requirements in a variety of sectors (*e.g.*, toys, machinery, medical devices) are regulated under a so-called "New Legislative Framework" (NLF). 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. Only products that conform to harmonized ENs under the NLF are presumed to be in conformity with the essential requirements. Moreover, a harmonized EN must be adopted at the national level by a Member State, and any conflicting national standard withdrawn. Harmonized ENs can only be developed through the European Standards Organizations (ESOs) as directed by the 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 is that it discourages the use of other standards. Specifically, the costs and uncertainty associated with not using a harmonized 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 a harmonized 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 harmonized 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.

CEN and CENELEC technical committees, which draft harmonized ENs, generally exclude non-EU nationals from participating in their standard-drafting process. In the limited instances where non-EU nationals do participate, they are not allowed to vote. Accordingly, when a U.S. producer uses a harmonized 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 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 Dresden 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. This approach limits opportunities for non-European stakeholders to contribute to the development of the standards at an early stage.

As for conformity assessment, the United States has serious concerns regarding the EU's conformity assessment framework, set out in Regulation (EC) 765/2008 and Decision 768/2008. Regulation 765/2008 requires each Member State to appoint a single national accreditation body that can accredit conformity

assessment bodies 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 768/2008 sets out reference provisions to be used in EU legislation establishing conformity assessment requirements for products falling within the NLF. Legislation applying Decision 768/2008 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 harmonized 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 (*e.g.*, 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 WTO 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.

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 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. REACH also 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 that it is important to regulate chemicals to ensure environmental and health safety. The United States is concerned, however, that risk assessments in support of REACH are based on incomplete scientific and technical information and therefore 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 as part of the registration process under REACH, they must provide data 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 and the supporting risk assessments by Member States. The United States and many other WTO Members continue to raise concerns regarding various aspects of REACH at WTO TBT Committee meetings. WTO Members remain committed to gaining 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. In 2020, the United States raised concerns bilaterally about a draft proposal to restrict "intentionally-added microplastics" based on concerns about the risk assessment processes.

Substances of Concern in Products Database

Under the revised Directive 2018/851/EU of the European Union and of the Council of May 30, 2018, amending Directive 2008/98/EC on waste, the ECHA was tasked with establishing a database for suppliers to input information about hazardous substances in materials and products. ECHA had originally planned to roll out the draft Substances of Concern in Products (SCIP) database in January 2020 for companies to begin testing and data entry one year ahead of the January 2021 final implementation deadline. ECHA missed this deadline and did not formally launch the SCIP database in its final form until October 2020. The information required in the database goes beyond the scope of Article 33.1 of REACH, raising the number of mandatory information categories from two under REACH to seven for the SCIP database. The burdensome requirements and the 10-month delay of the SCIP database release raise concerns about potential negative impacts on U.S. industry and adverse trade impacts, given that companies only had approximately 10-weeks to reconfigure existing internal data exchange systems between manufacturers and suppliers to comply with the deadline. Despite multiple requests by various stakeholders to postpone for a year the implementation of the new requirements, the Commission proceeded with the January 2021 implementation. The United States raised concerns about implementation of the SCIP database bilaterally and in the October 2020 WTO TBT Committee meeting.

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 SVHC Candidate List (CL), and then after further review, 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 do not always 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 are also required to 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 the further

restricted "Authorisation List" may only be used if the applicant obtains approval to do so and may be 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, U.S. industry has alleged that the EU initiated the SVHC CL without the completion of environmental monitoring and due consideration to hazard and risk assessments by regulators in other countries. 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 at 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 without serving a legitimate purpose.

Chemicals: Classification, Labeling and Packaging Regulation

The Chemicals: 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 unnecessarily restrictive for U.S. companies, because they 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. Further, 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. A concerning result around this lack of scientific basis for a broad labeling requirement on consumer products is that it dilutes the effectiveness of warning labels for products that pose genuine safety risks.

Chemicals Strategy for Sustainability

On October 14, 2020, the Commission released its strategy to reform the EU's chemicals legislation over the coming years, including a review of REACH, CLP, and other sectoral legislation regulating chemicals. The proposed changes include a more restrictive approach to potentially harmful chemicals and an increase of information requirements for chemicals sold in the EU. While some of the proposed changes could have a positive effect for U.S. business, including more transparent data requirements and stricter enforcement,

U.S. companies are concerned that the strategy is overly conservative and could burden businesses with requirements that might not be necessary for consumer safety. The Commission also intends to simplify the chemicals authorization process by adopting a "one substance, one assessment" approach. For U.S. companies, this could be a positive change from the current situation in which one substance may be covered by multiple regulations and authorities, each requiring a different authorization process. The Commission plans to present its proposal to revise REACH in 2022 and will provide opportunities for public and stakeholder input during 2021. The United States continues to monitor developments in this area and to ensure the EU is conducting regular consultations with U.S. companies.

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 savings as compared to a baseline for fossil fuels.

On January 29, 2019, the Commission recognized the U.S. Soybean Sustainability Assurance Protocol (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 EU. To date, two U.S. exporters have been certified to export biodiesel feedstock to the EU under the SSAP-RED program. However, the EU has reopened consideration of the RED program as part of the European Green Deal, so long-term benefits of the SSAP could be affected by future modifications to RED.

In November 2016, the Commission presented a new directive (RED II) for the period 2021 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 was adopted in December 2018 and entered into force on January 1, 2021.

The United States continues to actively monitor certain unresolved issues 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 $169 million in wood pellets to the EU (27) in 2020.

RED II requires Member States to prepare 10-year National Energy and Climate Plans (NECP) 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 Commission was December 31, 2019. On September 17, 2020, the Commission presented its 2030 Climate Target Plan, in which it proposes to revise the RED II sustainability criteria for forestry biomass. Depending on how the sustainability criteria are 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.

Glyphosate

Glyphosate, an herbicide used in plant protection products, is currently approved in the EU until December 15, 2022. Four Member States (France, Hungary, the Netherlands, and Sweden) are acting collectively as an Assessment Group on Glyphosate. The normal review process usually involves one Rapporteur Member

State (RMS) and one Co-RMS, and the process typically takes three years to complete. A group of companies submitted the application to renew approval of glyphosate in December 2019.

Following approval of an active substance in the EU, Member States control the authorization of formulated products containing that substance. Member States have various regulations limiting the use of products containing glyphosate and are beginning to ban glyphosate or have banned it entirely, including Austria, Belgium, France, Germany, Luxembourg, Italy, and the Netherlands. Member State bans affect the use of the substance in that country but do not affect any glyphosate maximum residue limits (MRLs), as all pesticide MRLs are determined at the EU level.

Austria: Since 2019, the Austrian Government has tried to implement a law to ban glyphosate and its products. The Austrian law was set to be implemented in January 2020, but, in a procedural error, the Austrian Government failed to send a verification to the Commission. In May 2020, the Commission and the Czech Republic submitted detailed opinions in opposition to the Austrian ban noting that the ban itself is against EU law. Since Austria did not address the Commission's objections by the November 2020 deadline, the proposal total glyphosate ban is not expected to enter into force. The ban remains tabled as Austria failed to modify the draft legislation or to respond to address the Commission's concerns by the November 2020 deadline.

France: In October 2020, France's Agency for Food, Environmental and Occupational Health and Safety announced plans to phase out the use of glyphosate-based products by January 2021, except where there are no viable alternatives. In December 2020, France also announced it would grant a tax credit of €2,500 (approximately $3,030) to farmers who declare in 2021 or in 2022 to have stopped use of glyphosate.

Luxembourg: On January 16, 2020, the Luxembourg Government withdrew the authorization for the herbicide glyphosate, thereby banning it from use in the country. The ban was introduced gradually in 2020 with a full ban of glyphosate by December 31, 2020. With this decision, Luxembourg became the first EU country to ban glyphosate.

Member State Sustainability Criteria

The Netherlands: In the Netherlands, local organizations and the national government have adopted and implemented standards and standard-related measures that impede or threaten to impede U.S. trade. For example, local organizations, such as the Sustainable Trade Initiative and the Forest Stewardship Council, have developed standards for soybeans and for wood pellets that have been supported by the national government and effectively require U.S. producers to meet onerous and unnecessary certification requirements. On March 30, 2015, the Netherlands 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 $48 million during the first eight months of 2020 (a 7.5 percent market share), the U.S. industry suggests the market would have much greater potential if trade requirements were simplified.

Medical Devices and In-Vitro Diagnostics

The United States has concerns around the implementation of the Medical Device Regulation (MDR) and the In-Vitro Medical Device Regulation (IVDR), most importantly the reduced number of notified bodies available to approve medical devices and in-vitro medical devices. The one-year delay in implementation

of the MDR to May 2021 provided some necessary relief, but several issues remain, including an inability to provide in-person audits due to the COVID-19 pandemic. The United States remains concerned about the limited capacity of Notified Bodies to approve both MDR and IVDR certifications throughout the EU by the current deadlines. The United States engaged the EU in 2020 through the WTO TBT Committee and bilateral discussions around those meetings to seek updates on the implementation of the MDR and IVDR, including the number of qualified notified bodies to perform conformity assessment requirements.

Furthermore, many of the standards referenced in the Commission's mandate to CEN/CENELEC are based on European standards instead of relevant international standards, which presents a risk of creating additional barriers to trade.

The Commission also adopted the Italian Classificazione nazionale e internazionali (CND), a unique device identifier (UDI) system that is not harmonized with the well-established UDI system that utilizes the Global Medical Device Nomenclature, which is widely adopted by the medical device industry and is used by over 70 national medical device regulators. The EU's selection of CND will undermine the interoperability of UDI systems for tracking and reporting purposes and will pose several significant obstacles to the medical device and healthcare community.

Wine Traditional Terms

The EU continues to restrict the use of "traditional terms," such as "tawny," "ruby," and "chateau," on labels on imported wine. This 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 has not taken action on the other terms. The United States has repeatedly raised this issue in the WTO TBT Committee and the WTO Committee on Trade in Goods, and has pursued bilateral discussions, including in 2020. Beyond approving the two terms, the EU has not taken any visible steps to address U.S. concerns and for the past nine years has consistently refused to provide a timeline for review of the applications submitted by U.S. industry.

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 have adopted EU standards, such as Israel and Russia. With a long history of quality whiskey production, the United States 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 quality product. 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 Alimentarius Commission (Codex), the World Animal Health Organization

(OIE), and the International Plant Protection Convention, or those that have scientific justification. As part of the Farm to Fork (F2F) Strategy announced in May 2020, the Commission intends to consider an animal welfare labeling initiative during 2021 that could impact sanitary certificate statements.

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, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary.

As part of the European Green Deal announced in December 2019 (aimed at making Europe "the first carbon neutral continent by 2050"), the Commission published its F2F Strategy in May 2020, which included targets and policy proposals for enhancing food and agricultural sustainability by 2030. These targets aim to reduce pesticide and fertilizer use by farmers, antimicrobial use in livestock, and land for crop use by transitioning farmland into organic production and idling other farmland. The EU has stated it will seek to "obtain ambitious commitments from third countries in key areas," which suggests that the EU may try to expand the reach of this policy beyond the EU. The targets must be converted into legislative proposals, and the European Parliament and Member States will shape and amend these proposals as part of the EU legislative process sometime between 2021 and 2024. The EU Ministers of Agriculture adopted the F2F Strategy on October 19, 2020, while registering a request that farming models other than organics be considered and that any new legislation must be based on "scientifically-sound ex-ante impact assessments."

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 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/World Health Organization Joint Expert Committee on Food Additives 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 Sanitary and Phytosanitary (SPS) Agreement. Following the failure by the EU to implement the recommendations of the WTO DSB to bring itself into compliance with its WTO obligations, the United States was granted authorization by the WTO in 1999 to suspend concessions. Accordingly, the United States levied *ad valorem* tariffs of 100 percent on imports of certain EU products. The value of the suspended concessions, $116.8 million, reflected the damage that the hormone ban caused to U.S. beef sales to the EU.

In September 2009, the United States and the Commission signed a Memorandum of Understanding, 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. 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 EU protocols for approval of veterinary medical products and their use. A specific goal is to address the problem of increasing antimicrobial resistance 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 a long record of safe use, the length of time taken for the EU to issue approvals of new GE crops now takes, on average, approximately six years.

As of February 2021, the United States is tracking 44 agricultural biotechnology product applications (including renewals) submitted to the EU, with respect to corn, soybean, rapeseed, and cotton. Of those applications, 30 are waiting for a scientific review by the European Food Safety Authority (EFSA) and 14 are waiting for approval action by the Commission.

In January 2021, the EU authorized 5 crops (3 corn and 2 soybeans) and renewed the authorization for 3 corn crops used for food and feed. 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 2021 approvals for five new products (corn and soybeans) and three corn renewals took over four years on average to complete from the time the applications were submitted, with one product taking over eight years to approve. In addition, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. In 2020, the Commission waited until

September to convene the first Standing Committee on Plants, Animals, Food and Feed (PAFF) responsible for taking decisions on GE approvals, even though PAFFs responsible for other topics were convened throughout the year. Unnecessary delays of this nature contribute to increasingly lengthy EU approval timelines, despite the fact that 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 known as comitology).

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 low-level presence 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 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 (EU Directive 2015/412). 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 exclusion of their entire territory 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. One region includes Wallonia in Belgium. 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. 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.

Croatia: Croatia adopted legislation in 2015 to implement its right to opt out of GE cultivation.

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. Greece is in the process of adopting new legislation that will incorporate EU Directive 2015/412 to officially implement the cultivation opt-out clause. The draft legislation passed the public comment period in 2016 and is still awaiting governmental action.

Italy: Italy does not commercially cultivate any GE crops, even for GE seed production. Since 2013, Italy has banned the cultivation of GE crops despite two EFSA rulings stating no new scientific evidence has been presented to support Italy using the safeguard clause. Since 2015, 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 most recently extended the prohibition on December 5, 2020, for an additional two years until January 1, 2023. 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 Plant, Animals, Food and Feed (PAFF) 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 PAFF 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. To date, the Commission has taken no action for the approval of pork PRTs. 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 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 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, 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 EU is in the process of updating all certificates, including those for products of animal origin (dairy, meat casings, and animal by-products), composite products, live animals, sprouts for human consumption, seeds for producing sprouts for human consumption, and aquatic animals. The EU is proposing revisions to the import conditions for composite products differentiating them into three "risk-based" categories. The EU will continue to require composite product certificates for all non-shelf-stable products and for shelf-stable composite products with a meat ingredient. Shelf-stable products without a meat ingredient must be accompanied by a private attestation that will be checked at the border. For those products that remain subject to certification, verification of establishments will apply. On December 15, 2020, the EU confirmed in a written response to U.S. comments that, despite an April 2021 implementation, it will accept previously negotiated certificates until October 20, 2021, as long as the certificates are signed before August 21, 2021. The United States continues to engage the EU in various international fora and bilaterally to resolve 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 SCC requirements add unnecessary costs without apparent 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 (categories 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 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, the EU in 2016 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 USDA's Animal Plant Health and Inspection Services (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 EU BSE requirements with the standards and recommendations of the OIE. 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.

The SRM 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.

Member State Measures

Dimethoate

France: On April 18, 2019, France reinstated a ban on the import and sales of cherries from countries where dimethoate, a pesticide and acaricide considered by some to be an endocrine disruptor, can be used to kill mites and ticks on cherries and cherry trees. France's decision followed a ban on domestic production. France imports roughly one-fifth of its cherry consumption, the bulk of which comes from EU countries including some (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 of the cherries 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).

Pesticide Maximum Residue Limits

MRLs and import tolerances are established under separate legislation, Regulation (EC) 396/2005, which is risk-based rather than hazard-based. The United States is concerned that for substances not approved under Regulation 1107/2009 due to the 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 conducted an evaluation of existing legislation on plant protection products and pesticide residues through the Regulatory Fitness and Performance process. However, it is still 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.

The EU regulations also establish transitional periods for new MRLs. For some of these products, there may be multiple years between when a pesticide is applied and when the final product is offered for sale, creating a situation where products that are legally produced do not have time to clear the channels of trade. EU products on the other hand appear to remain available for sale as long as they are produced prior to MRLs changing. The United States for years has raised concerns over the EU's policy approaches. 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, France, Germany, Spain, and the United Kingdom (as well as, to a much lesser extent, Belgium) 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 from 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 $$910 million) spent by the city of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 "superjumbo" aircraft. French authorities also spent €182 million (approximately $220 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 EU governments are set to absorb huge losses as the failed program nears its final deliveries. 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. The French and German Governments each own 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 governments 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. It also sought 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 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 launch aid to 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.

For a discussion on U.S. countermeasures, see Chapter II.B Section 301 of the 2020 Annual Report.

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 $236 million) for Belgian industrial participation in the A380 program and in 2008, a budget of €150 million (approximately $206 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. The average intervention for the A380 program, which ended in 2019, was 47 percent and for the A350 XWB program, 54 percent. Belgium did not consider these interventions as grants but reimbursable advances based on sales forecasts for each aircraft, ostensibly 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 and in 2019 announced that it will shut down the production of the A380 in 2021).

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 as of March 2021.

For the A350 XWB and A380 programs, the price distortion resulting from Belgian subcontractors is estimated to be a minimum of €370 million (approximately $448 million). For the A400M program, the Belgian federal government in 2016 agreed on a €45 million (approximately $54 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 French Government confirmed €1.4 billion (approximately $1.7 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 French Government's 2021 budget includes €92 million (approximately $111.5 million) in reimbursable advances for aeronautical/aviation products, down from €175 million (approximately $212.2 million) in the 2020 budget. As of March 2021, France has not yet announced its appropriations for new programs in support of research and development for 2021.

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 $90 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. Then in 2013, the Aerofund III equity fund was launched with a fundraising target of €300 million (approximately $363 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 €211 million (approximately $255 million) in over 10 aerospace companies.

Germany: Between 2010 and 2015, the German Government provided Airbus with a €1.1 billion (approximately $1.3 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 €942 million (approximately $1.14 billion) for the development of the A380 of which Airbus has so far only repaid about one-third. Airbus announced it will shut down the production of the A380 in 2021. Airbus also receives funds from the German Government's aeronautics research program for a number of projects.

Hungary: Following the Hungarian Ministry of Defense's procurement of 36 Airbus helicopters in 2018 and 2019 for about €500 million (approximately $606 million), Airbus agreed to establish a new helicopter spare parts manufacturing site and training center in Hungary in a joint venture with the Hungarian Government, which will have a 30 percent stake. The local government provided 49 million Hungarian forints ($160,000) in support of the venture. The site will be under the joint ownership of Airbus and the Hungarian Government. Production is expected to start in 2022.

Portugal: In December 2019, the Portuguese Government authorized a €10.6 million (approximately $12.8 million) non-reimbursable loan under COMPETE 2020 to Stelia Aerospace, a wholly owned subsidiary of Airbus, for the construction of a 20,000 square meter facility for the production of fuselages. Similar support may be offered to other aerospace companies such as Embraer, which has operations in Portugal.

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 $15.3 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 €11.8 billion (approximately $14.3 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 Member States on participation of third country (non-GPA or non-trade agreement partners) 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, Croatia, 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 concluded 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.

France: France continues to maintain ownership shares in several major defense contractors (11.0 percent of Airbus, formerly EADS, shares through its holding company SOGEPA (Societe de Gestion de Participations Aeronautiques); 11.2 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 for 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 now 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.

Lithuania: U.S. firms have reported concern over the use of "lowest cost" criteria as the primary determination for awarding contracts. Although Lithuanian law allows for consideration of factors such as quality, company reputation, and prior experience in the decision-making criteria, "lowest cost" bidding continues to be a common practice. Additionally, U.S. companies have expressed frustration that large projects are often broken up into multiple, smaller tenders, favoring local companies and reducing economies of scale for foreign bidders.

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 (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 that it 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 burdensome documentation requirements for foreign suppliers to compete. In September 2020, after discussions with the U.S. Government, the Slovak Public Procurement Office informed the U.S. Embassy that it plans to allow U.S. companies to self-certify some of the documentation requirements.

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, the Commission on September 14, 2016, 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 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.

The United States also will closely monitor the EU Commission's Digital Services Act (DSA) proposal, another legislative initiative that purports to govern online services and how content is shared online.

In January 2016, Trademark Directive 2015/2436 and Regulation 2015/2424 entered into force. Some of the articles of the directive needed to be transposed by the Member States by January 14, 2019, and others must be transposed by January 14, 2023. The United States continues to work with the EU and its Member States on trademark issues and is closely following implementation of the trademark package.

The United States remains highly troubled by the EU's overbroad protection of geographical indications (GIs), which adversely impacts both 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 about 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. The EU has granted GI protection to thousands of terms that limits use in the EU market to only certain EU producers, and the use of any term that even "evokes" a GI is also blocked. However, despite this level of protection afforded to products sold within the EU, some producers in Member States still produce products that are protected as GIs in other Member States and then export these products outside the EU, such as feta made in Denmark and France. The EU has also granted protection as a geographical indication to the cheese names danbo and havarti, widely traded cheeses which are covered by international standards under Codex. Several countries, including the United States, opposed GI protection of these common names both during the EU's opposition period and at the WTO, but the Commission granted the protection over that opposition and without sufficient explanation to interested parties.

Regulation 1151/2012 also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce specific EU GIs in their markets, 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 Agreement on Trade-Related Aspects of International Property Rights (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 IP rights should be evaluated independently on their merits, based on the unique circumstances of each jurisdiction. The United States is also concerned by the EU's attempts to restrict common terms for wine in third country markets and by the EU's push for the introduction of a system of *sui generis* protection of non-agriculture products. The United States is carefully monitoring the implementation of each of these regulations and proposals.

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 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 November 2019, and the Agreement entered into force on February 26, 2020.

In addition, the EU approved amendments to its patent term restoration mechanism, Supplemental Protection Certificates (SPC) (Regulation EC 469/2009). The amendments alter 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 the EU 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 2020, 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: Enforcement concerns in Bulgaria include inadequate prosecution efforts, lengthy procedures, and insufficient criminal penalties, particularly in the area of online piracy. Stakeholders have raised

concerns as to notorious online pirate sites reportedly hosted in Bulgaria. The number of prosecutions against individuals continues to be low and penalties for IP criminal violations, including in the area of online piracy, fail to offer any meaningful deterrent. In addition, Bulgaria still has not adopted the technique of evidence sampling in connection with criminal investigations involving online infringement. Bulgaria previously agreed to adopt this technique of reviewing random samples of content from online sites, instead of reviewing all of the content, to determine whether infringement is occurring.

France: The French Government is increasing its efforts to combat online piracy. The Ministry of Culture 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 Superieur 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 was delayed by the COVID-19 pandemic and the appointment of a new government in July 2020. However, in October 2020, the State Secretary for Digital Transition and Electronic Communications announced the French Government's commitment to implement all European directives before France's Presidency of the European Council of Ministers, which begins on January 1, 2022. As part of that effort, France implemented on December 3, 2020, the law on "various provisions adapting to European Union law in economic and financial matters" (also known as the DDADUE law), including the EU Directives on Audiovisual Media Services and on Copyright and Related Rights in the Digital Single Market. To become enforceable, they will require further executive orders and government decrees ensuring their promulgation during the first half of 2021. French Government decrees will focus on specifics, including new powers for the Higher Audiovisual Council to oversee relations between online content-sharing service providers and right holders as well as financial contributions from French and U.S. platforms to the production of EU and French television and movie production, based on their revenues in France. The United States will continue to monitor ways this legislation may impact U.S. stakeholders.

Germany: Germany is in the process of implementing the EU Directive on Copyright with draft amendments to the country's copyright law released for public consultation by the Ministry of Justice and Consumer Protection in October 2020. The draft amendments will introduce an ancillary copyright for press publishers and new requirements for online platforms regarding user uploads of potentially copyright-protected content, including the development of pre-flagging mechanisms through which users can mark individual uploads as legitimate and obligations to take down "obviously falsely marked content."

Germany is also amending its patent law. Draft amendments were released in October 2020 following public consultation and have been passed to the parliament for debate and approval. The United States will continue to monitor these developments and the impacts on U.S. stakeholders.

Greece: Greece was removed from the Watch List in the Special 301 Report due to progress in addressing concerns regarding IP protection and enforcement and in light of its steps to address the widespread use of unlicensed software in the public sector. Specifically, Greece allocated significant funds and made a subsequent award, to purchase software licenses, which had been a long-standing concern of right holders. Moreover, Greece made progress in online enforcement and introduced legislation to impose fines on those possessing counterfeit products. The United States will continue to monitor Greece's enforcement efforts.

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 Special 301 Report. 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. Adequate resources, including additional training for law enforcement and funding for prosecutors, are also needed to enhance enforcement quality.

Spain: Despite taking positive legislative steps in the previous years, online piracy and illegal camcording remain a concern. The Spanish Government set up an inter-ministerial and intragovernmental task force to address the issue of counterfeit sales in physical markets in December 2019 and has taken steps to address this issue. For example, in September 2020, Spain's Guardia Civil and Customs officers raided six businesses in the Els Limits de la Lonquera market, seizing over $5 million worth of counterfeit items and exposing various warehouses and workshops that produced illicit goods. The new Madrid municipal government has also taken steps to curtail street sales of counterfeit goods in the capital. The Spanish National Police on March 4, 2020, seized more than 3000 pieces of counterfeit merchandise during an inspection of two warehouses in Madrid.

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: Illegal streaming activities remain a threat to the movie, television, and live sports telecast industries in Sweden. However, legal sales of music and film have increased in recent years, in part because of enforcement efforts from right holders, as well as from the government, and increased awareness of the importance of IP to Sweden's economy and culture. Enforcement efforts by the Swedish Government have also shown positive results, and right holders report that court cases to enforce their rights are successful in the vast majority of cases.

On September 1, 2020, the Swedish penal code was strengthened through the introduction of heightened penalties for serious IP crimes, including those involving copyright. Amendments to the code also provide enforcement authorities with additional tools to tackle illicit IP-related activities, including the possibility to use electronic surveillance in investigations and to seize goods and revenue associated with criminal activity. The Patent and Market Court, Sweden's IP court, on July 1, 2020, ordered a major Internet service provider, Telia, to take action against four IP-infringing sites, including the Pirate Bay.

SERVICES BARRIERS

Telecommunications

Electronic Communications Code

The EU Electronic Communications Code (EECC), adopted in 2018, regulates the telecommunications sector and includes rules on network access, spectrum management, communication services, universal service, and institutional governance. 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 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. 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 and 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 proposed regulation also would expand regulatory coverage intended for traditional telecommunications services providers to OTT Internet-enabled services. It also would apply extraterritorially, including in circumstances where processing is conducted outside the EU in connection with services provided within the EU.

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 both the European Council and the European Parliament finalize their versions of proposed legislation). In February 2021, the European Council announced that it had finalized its version of the legislation, which clears the way for trialogue to begin.

International Termination Rates

One of the main cost components of an international telephone call from the United States to an EU Member State is the rate a foreign telecommunications operator charges a U.S. operator to terminate the call on the foreign operator's network and deliver the call to a local consumer. The WTO General Agreement on Trade in Services Telecommunications 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.

Currently, several Member States (Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, and Slovenia) permit suppliers to charge U.S. suppliers differentiated rates that are higher than the rates charged for terminating traffic originating in one of the other Member States. 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.

On December 18, 2020, the Commission adopted a Delegated Regulation under Article 75 of the EECC setting maximum fixed and mobile voice call termination rates in the EU. In the Delegated Regulation, the Commission notes that the EECC requires that the costs of termination services are to be calculated on the basis of a forward-looking long-run incremental costs methodology and that it commissioned two cost studies: one for mobile termination services and one for fixed termination services. The final rates set by the Commission are €0.2 cent/min (approximately $.24 cents) for the single maximum Union-wide mobile voice termination rate and €0.07 cent/min (approximately $.08 cents) for the single maximum Union-wide fixed voice termination rate. The Delegated Regulation includes a one-year transition period for fixed termination services with the final rate taking effect in 2022, and a three-year transition period for mobile termination services with the final rate taking effect in 2024. In addition, Articles 75(2) and 75(3) of the EECC require the Commission to review the Delegated Regulation every five years.

The Delegated Regulation, however, only directly applies to calls originating and terminating with the Member States. The rates set by the Delegated Regulation do not apply to calls originated outside the Union (*i.e.*, in a third country) except in two circumstances: (1) where a provider of termination services in a third country provides termination services for calls originated inside the EU at rates equal or below the maximum (mobile or fixed) termination rates set out in the Delegated Regulation; or, (2) if a third country applies cost model principles for termination rates that are equivalent to those set out in Article 75 and Annex III of the EECC. This appears to suggest that Member States will continue to 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) (comprised of the EU Member States, Iceland, Liechtenstein, and Norway), and for the termination of international traffic between sovereign states within the EU or EEA. The United States will continue to monitor the implementation of Article 75 of the EECC by the EU and its Member States to ensure that the rates charged to U.S. suppliers for termination services to Member States are cost-oriented and that Member States do not allow for differentiation of termination rates on the basis of the national origin of the call in a manner that adversely affects U.S. suppliers.

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. However, the original AVMSD did not set any strict content quotas for on-demand services, although it still required Member States to ensure that on-demand services encourage production of, and access to, "EU works."

The 2018 amendments include provisions that 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, Member States, and the European Parliament reached political agreement in December 2018.

The amendments to the SatCab were published in the Official Journal of the EU on May 17, 2019, and will need to be transposed by Member States into national law by June 2021. The amended directive broadens the country of origin principle to certain online transmissions. This allows broadcasters that are based in one EU Member State to make content available online throughout the EU based on having cleared the rights for only that Member State. These rules will apply only to radio programs, TV news and current affairs programs, and TV productions fully financed by broadcast organizations. The directive will be reviewed in 2025, and the country of origin criteria could be expanded at that time.

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 EU origin must include original French-language content. These quotas apply to both 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 programing is 15 percent. A July 2016 regulation specifies that only if the top 10 most played French songs on a station account for less than 50 percent of the songs played are they counted towards the quota. France's 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 described the contents of a draft law implementing the AVMSD, which was expected to include a new requirement for video-on-demand to increase their investment in French content creation beyond the current 10 percent of revenues. An October 22, 2020 draft executive order enforcing the AVMSD details the mandatory contribution to the financing of French and European movie and audiovisual productions by video-on-demand subscription platforms (SVODs) established in France or in the EU but targeting a French audience. This decree, which is expected to be published in the spring of 2021, will require SVODs to pay 20 to 25 percent of their French revenue in "contributions" to operate and produce in France. The French Government intends for the decree to enter into force on July 1, 2021, with effect retroactive to January 1, 2021.

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.

Hungary: In September 2020, modifications to Hungary's media law entered into force. The modifications, in part, implement the AVMSD. The law requires that half of the television broadcasters' content providing services within Hungary be of EU-origin and one-third of Hungarian origin. It also requires broadcasters to offer programing options for people with visual or hearing disabilities. Radio broadcasters must dedicate at least 35 percent of their music broadcasts to music composed by Hungarians.

Poland: Television broadcasters must dedicate at least 33 percent of their broadcasting time quarterly to programs 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 at least 60 percent of broadcasting time between 5:00 a.m. and midnight to programming in Polish. 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 Portuguese or in traditional Portuguese genres, with at least 60 percent of this produced by EU citizens.

In November 2020, when it enacted the 2018 AVMSD amendments into national law, the Portuguese Government imposed a new one percent annual fee on relevant income from on-demand or streaming platforms. The fees collected under this measure are to be transferred to the Institute of Cinema and Audiovisual, whose main mission is to support Portuguese language productions in Europe and abroad. If

it is not possible to determine the relevant income of an on-demand or streaming platform, the annual fee will be €1 million (approximately $1.1 million). The legislation is expected to enter into force in 2021.

Slovakia: Since April 2016, the amendment to the 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 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 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 November 2020, 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, the regional government and major movie studios in 2012 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.

VoD 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. In November 2020, the Spanish Government proposed legislation that would expand this tax on earnings to streaming services not domiciled in the country. The revenues would finance EU content, including at least 70 percent by independent producers and 40 percent of independent productions in Spain's official languages.

Legal Services

Austria, Belgium, Bulgaria, Croatia, Cyprus, 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 the 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 of 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, which 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 large retail chains. Industry representatives have reported that these new laws unfairly advantage domestic retailers competing with large foreign retail firms.

In 2020, the Hungarian Parliament passed a law imposing a progressive special tax on retail companies with annual revenues above $2 million. According to the Finance Ministry, online multinational companies and Internet shops are also subject to this tax. The tax rate on net sales for companies with annual revenues between $2 million and $76 million is 0.1 percent; between $76 million and $254 million, 0.4 percent; and, for revenues above $254 million, 2.5 percent. Businesses note that the tax will almost exclusively affect foreign companies.

Poland: Retailers have expressed concerns about tax measures directed at companies operating in retail sectors. In July 2016, Poland adopted a new tax on companies engaged in the retail sale of goods that would impose progressively higher rates of taxation based on a company's turnover. In June 2017, the Commission ruled that the measure breached EU rules on state aid by unduly favoring certain companies

over others, and Poland subsequently suspended implementation of the tax. In October 2020, however, in an advisory opinion, the Advocate General of the CJEU concluded that the Polish tax on retail sales does not violate EU law in the field of state aid. If the CJEU agrees with this advisory opinion, implementation of the retail tax will likely resume.

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 (approximately $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 European Commission notified Romania of possible infringement proceedings in 2017 due to the law's requirements, particularly the "51 percent" rule. In 2020, Romania altered the law and introduced "direct partnership" between commercial retailers and agricultural cooperatives, agricultural producer associations, and agricultural producers and distributors, via 12-month commercial contracts. The Ministry of Agriculture will draft subsequent legislation to establish the terms of these direct partnerships.

DIGITAL TRADE BARRIERS

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 a growing global trend. The General Data Protection Regulation (GDPR) restricts the transfer of the personal data of EU data subjects (any natural 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 (SCCs) 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).

On July 16, 2020, the CJEU issued a judgment in the Schrems II litigation that invalidated the Commission's adequacy decision for the EU–U.S. Privacy Shield Framework. Since the Commission issued the adequacy decision in July 2016, the EU–U.S. Privacy Shield Framework provided organizations with a mechanism to comply with EU data protection requirements when transferring personal data from the EU to the United States. In its Schrems II judgment, the CJEU upheld the validity of SCCs but imposed an affirmative obligation on entities using SCCs "to verify, on a case-by-case basis... whether the law of the third country of destination ensures adequate protection under EU law." On November 10, 2020, the European Data Protection Board (EDPB) issued two recommendations for public comments: one on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data (01/2020) and another on European Essential Guarantees for surveillance measures (02/2020). On November 12, 2020, the Commission published a proposal for new text for SCCs, which includes a requirement for entities to replace all existing SCCs with the new language within 12 months. The new SCCs would cover four different legal scenarios under EU law, including: (1) controller-to-controller transfers; (2) controller-to-processor transfers; (3) processor-to-processor transfers; and, (4) processor-to-controller transfers. The proposed SCCs also reference the EDPB recommendations on supplementary measures.

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 businesses in the EU. Although the EU released a draft adequacy decision for the United Kingdom in early 2021 and prior to that adopted an adequacy decision for Japan in 2019, there remain many countries, including India and Korea, that have expressed interest in obtaining an adequacy determination to facilitate the exchange of data with the EU that have not received a determination.

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 Data Protection Authority (DPAs) can impose fines of up to four percent of annual global revenue on firms that breach the data protection rules. On June 24, 2020, the Commission submitted to the European Parliament and Council a report on its review of the GDPR as required by Article 97 of the GDPR. This report will be produced every four years.

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. There are serious concerns that implementation of the GDPR has curtailed access to the WHOIS registry of the contact information for website domain names. This has a significant effect on intellectual property (IP) rights enforcement efforts and the ability of legitimate rights holders to pursue legal remedies against infringers and bad actors, including those responsible for malware, botnet attacks, and phishing schemes. The GDPR is also 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.

Interactive Computer Services

The Commission has adopted a new strategy for the digital economy, titled "A Europe Fit for a Digital Age." EU leaders have also promoted "technological sovereignty" or "digital sovereignty" as a policy objective, which, while it remains an ambiguous concept, appears to focus largely on the desire to boost the capacity of Europe's domestic industry. As part of this approach, the EU has outlined a number of broad legislative proposals in this area, including the Digital Services Act (DSA) and the Digital Markets Act (DMA). In addition, the EU has proposed other initiatives affecting digital services, such as the GAIA-X project to develop common requirements for a European data infrastructure and the Digital Governance Act. Based upon public statements of some key EU officials, there is concern among U.S. industry that the Commission's proposals could unfairly target large U.S. service suppliers and hamper their ability to provide innovative, Internet-based services in the EU.

Digital Services Act (DSA)

On December 15, 2020, the Commission published its proposal for a "Regulation on the Single Market for Digital Services (Digital Services Act)." The proposal will now have to be taken up by the European Council and Parliament. The proposed DSA would provide the Member States and the Commission with the authority to impose fines not exceeding six percent of the total annual turnover of an intermediary service provider. The proposed DSA would also provide the Commission with the power to adopt "delegated acts" for portions of the DSA, which provides the Commission with expansive authority to adopt additional regulation.

The proposed DSA would incorporate the existing provisions on the liability of providers of intermediary services in the EU E-Commerce Directive (2000/31/EC) and would provide for additional harmonization of notice and take-down procedures across Member States. It would add new obligations for providers of intermediary services to act against a specific item of illegal content, or to provide information about one or more specific individual recipients of the service, in response to judicial or administrative orders. The proposed DSA would require these providers to establish a single point of contact in the EU for the Commission, the newly designated Member State regulators (known as Digital Services Coordinators), and the newly created European Board for Digital Services (EBDS). In addition, those providers that are not established in the EU, but offer services in the EU, would have to designate a legal or natural person to serve as their legal representative and that representative would be liable for non-compliance with the DSA. The legal representative would be required to have the authority to comply with the decisions of the Commission, the EDBS, and Member State authorities.

The proposed DSA would require providers of hosting services to create a user-friendly, electronic system for any individual or entity to notify them of specific items considered to be illegal content. Notices to this system that contain certain specified types of information would be considered actual knowledge by the provider of the presence of the illegal content. If the provider removes access to the specific information considered to be illegal content, it would be required to provide detailed notice of the reasons for the decision to the user of the service that provided the information.

The proposed DSA would require online platforms to provide users with access to a user-friendly, electronic complaint-handling system to resolve complaints over removal of information submitted by users and suspension or termination of the user's account or service to the user. Under the proposal, online platforms must not make decisions on such complaints solely on the basis of automated means. Further, users may appeal decisions to any "out-of-court" dispute settlement body certified by a Member State Digital Services Coordinator. Online platforms would also have the obligation to suspend, after a prior warning, provision of their service to users that frequently provide manifestly illegal content. Online platforms would also have an obligation to promptly inform the law enforcement or judicial authorities of the Member State when they become aware of any information giving rise to a suspicion that serious criminal offense involving a threat to the life or safety or persons has taken place, is taking place, or is likely to take place.

The proposed DSA would provide for the designation by Member State Digital Services Coordinators of selected entities as "trusted flaggers" and would require online platforms to take the necessary actions to ensure notices submitted by trusted flaggers are processed and decided upon with priority and without delay. The proposed DSA would require online platforms that allow consumers to conclude contracts with traders to obtain certain information on traders using their platform, check on the accuracy of such information, and suspend the trader's account if the information is inaccurate or incomplete. Online platforms that display advertising would also be subject to additional obligations.

The proposed DSA would require these providers to publish, at least annually, a detailed report on any content moderation engaged in by the provider during the period, including information on the number of orders concerning illegal content received from Member State authorities, the content moderation engaged in at the provider's own initiative, and the number of complaints received under the newly required complaint system. Online platforms would have additional obligation to include in such reports information on disputes submitted to out-of-court dispute settlement bodies, suspensions, and automatic means used for content moderation. Upon request by the Digital Services Coordinator, platforms would also have to provide the coordinator real time information on the average monthly active users of the service.

The proposed DSA defines as a "Very Large Online Platform" (VLOP) any online platform with "average monthly active recipients of the service" in the EU equal to or higher than 45 million (the EU will adjust this number in the future to ensure it corresponds to 10 percent of the EU population). The proposed DSA

would impose additional obligations on VLOPs to address "systemic risks" present in their services. It defines systemic risks as the dissemination of illegal content, any negative effects for the exercise of certain fundamental rights and intentional manipulation of the service. The VLOP would have to consider how its content moderation systems, recommender systems and systems for displaying advertisements influence these risks and enact mitigation measures for any systemic risks. The EBDS and the Commission will publish an annual report on the systemic risks reported by VLOPs and best practices for mitigation of those risks. The proposed DSA would require VLOPs to subject themselves to an independent, annual audit of their compliance with the DSA and to take any necessary measures to address any deficiencies identified in such audits. The proposed DSA would impose additional obligations on VLOPs for their recommender systems and display of advertising.

Digital Markets Act (DMA)

On December 15, 2020, the Commission published its proposal for a "Regulation on contestable and fair markets in the digital sector (Digital Markets Act)." The proposal will now have to be taken up by the European Council and the European Parliament. As proposed, the DMA would provide the Commission with new authority to regulate the business practices of a significant portion of digital services providers. The DMA would provide the Commission with the authority to impose fines not exceeding 10 percent of the total annual turnover of an intermediary service provider. The DMA would also provide the Commission with the power to adopt "delegated acts" for portions of the DMA, thereby providing the Commission with expansive authority to adopt additional regulation.

As proposed, the DMA would apply to "core platform services" which includes a broad swath of existing digital services, including online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communications services, operating systems, cloud computing services, and advertising services (including networks, exchanges, and any other advertising intermediation services). The DMA would provide the Commission with authority to add new services to the list of "core platform services." The Commission would have broad authority to determine that any provider of one or more core platforms services is a "gatekeeper," but the proposed DMA sets out that the Commission should designate as a "gatekeeper" any provider that: (1) provides a core platform services in at least three Member States and has an annual EEA turnover of €6.5 billion (approximately $7.7 billion) or more over the previous three years, or an average market capitalization of at least €65 billion (approximately $78 million); and, (2) has had for each of the last three financial years, 45 million monthly active end users established or located in the EU and more than 10,000 yearly active business users established in the EU.

Once a provider has been designated as a "gatekeeper," the provider would have six months to come into compliance with a number of obligations set out in Articles 5 and 6 of the proposed DMA. A gatekeeper must also submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services. Article 5 describes "Practices of gatekeepers that limit contestability or are unfair" and lists a number of practices that gatekeepers must refrain from taking, or that gatekeepers must allow business users to engage in or provide to advertisers and publishers. Article 6 describes "Obligations for gatekeepers susceptible of being further specified" and lists a number of practices that gatekeepers must refrain from taking, or that gatekeepers must allow business users and end users to engage in or that gatekeepers must provide to business users, advertisers and publishers. Article 6 also requires gatekeepers to provide to any third-party providers of online search engines access to ranking, query, and click and view data in relation to search generated by end users on online search engines of the gatekeeper, subject to anonymization of personal data.

The proposed DMA would require gatekeepers to inform the Commission of any intended acquisition or merger involving another provider of core platform services or of any other services provided in the digital

sector prior to its implementation and following the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest. The DMA would give the Commission broad authority to conduct market investigations to determine whether to designate a provider as a gatekeeper and whether a gatekeeper is in full compliance with obligations under the DMA. The Commission may compel information and conduct on-site inspections of premises of providers. Under the proposal, if the Commission determines that a gatekeeper has "systemically infringed" obligations in Articles 5 and 6 and has "further strengthened or extended its gatekeeper position," the Commission may impose "any behavioral or structural remedies" that are proportionate to the infringement.

Germany: Germany is in the process of reforming its competition law in order to address perceived challenges posed by digital platforms. In line with key elements from the proposed DSA and DMA, the draft amendments passed by the German Government in September 2020 include an *ex ante* approach to cartel proceedings against digital platforms on the grounds that a company has "paramount cross-market significance for competition." Once the cartel authority determines a platform should be classified as such, it would have broad powers at its disposal, including prohibiting platforms from favoring their own services over those of competitors when facilitating access to markets, preventing platforms from hindering competition in neighboring markets even where the platform is not dominant prohibiting use of data collected in markets where a platform is dominant to hinder competition in other markets, and impeding interoperability of services or portability of data. The draft amendments will have to be approved by parliament and are likely to enter into force in early 2021.

Platform Regulation

On June 20, 2019, the EU adopted a regulation on platform-to-business services and online search services. The 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 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 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 will create significant uncertainty for many U.S. services suppliers participating in EU markets. The proposed regulation is currently in the trialogue stage of the EU legislative process. Trialogue is a negotiation between the Council, European Parliament, and the European Commission. During trialogue the three EU institutions seek to reconcile any legislative amendments that have been proposed by the Council or the Parliament. Once trialogue is complete, legislation usually advances toward final approval.

Austria: On January 1, 2020 new Austrian legislation to combat online hate speech went into effect. The law requires online social media platforms with more than 100,000 users in Austria and annual revenue of at least €500 million (approximately $560 million) in Austria to establish a complaints department with a streamlined procedure for managing hate speech posts. The law allows individuals to sue in court to compel platforms to immediately delete content ruled as hate speech. Media platforms and communication forums

that are "directly linked to journalistic activity" are exempt from the new law. Online information services, such as Wikipedia and online retail services are also exempt.

France: On June 18, 2020, France's Constitutional Council invalidated core provisions of France's online hate speech law, ruling the law violated freedom of speech. The invalidated law was adopted by the French Parliament on May 13, 2020. The law would have required online platforms to remove hate speech and other specified harmful content within 24 hours and to remove any flagged content related to terrorism or child pornography within one hour.

On December 9, 2020, the French Prime Minister sent to the National Assembly for approval draft legislation entitled Upholding Republican Principles. In the wake of the October 18, 2020, beheading of a school teacher, whose name and school address were published on social media, the draft bill introduces a new provision prohibiting the divulging on the Internet of personally identifiable information that endangers others physically, psychologically, or materially. This potential new offense would be punishable up to three years in prison and a fine of €45,000 (approximately $54,600). If the targeted individual is a public servant, the punishment would be more severe – up to five years in prison and a fine of €75,000 (approximately $91,000). This provision would also require social media platforms to remove such harmful content within a specified timeframe, putting more pressure on them to take quick action and better regulate content on their platforms.

Germany: In January 2018, the Improve the Enforcement of Rights in Social Networks (NetzDG) went into effect in Germany. The NetzDG mandates the removal of "obviously illegal" content within 24 hours of notification and other illegal content within days of notification and provides for fines as high as €50 million (approximately $57 million) for non-compliance. Germany is currently amending the NetzDG in an effort to implement the EU Audiovisual Media Services Directive and its requirements for video sharing platforms to comply with provisions regarding incitements to violence and hate. The amendments also require a more user-friendly reporting mechanism, expand the scope of obligatory transparency reports, simplify the enforcement of information requests, and require better protection of users against unauthorized deletion of their posts.

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 that 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 EU published its Directive on Copyright, which Member States will need to transpose 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 in 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: On October 25, 2019, France adopted an amendment to its intellectual property code to partially transpose the Directive on Copyright. Subsequently, on April 9, 2020, French press publishers and news agencies obtained an injunction from France's competition authority against a U.S. provider of an online news aggregation service. The injunction required the U.S. provider to enter into "good faith" negotiations with requesting press publishers and news agencies to cover the period retroactive to the date of adoption of the change in French law and to conclude such negotiations within three months of the request. On October 9, 2020, the Paris Court of Appeal upheld the competition authority's order.

Article 30 of the French 2017 Freedom of Creation Act 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. There are continuing stakeholder concerns regarding the legal uncertainty created by the law and its effect on innovative businesses in France.

Germany: Germany is in the process of transposing the Directive on Copyright, with draft amendments to its copyright law released for public consultation by the Ministry of Justice and Consumer Protection in October 2020. The draft amendments provide that the ancillary copyright for press publishers will not apply to online news aggregation services' use of "single words or very short excerpts" or hyperlinks.

Spain: A 2014 amendment to the Spanish IP law, 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.

Digital Services Taxation

Over the past two years, a number of Member States have taken under consideration or adopted taxes on revenues that certain companies generate from providing certain digital services to, or aimed at, users in jurisdictions. These taxes are generally referred to as digital services taxes (DSTs). Available evidence suggests the DSTs are targeted at large, U.S.-based technology companies. For its part, the Commission has also stated that it may propose again an EU-wide DST and included such a tax as an option to generate revenues to pay for the EU COVID-19 relief package.

The United States opposes proposals by any country to single out 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, thereby having a discriminatory effect on U.S. suppliers participating in EU markets. In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation of the EU's consideration of a DST over concerns that it would be potentially unreasonable or discriminatory and burden or restrict U.S. commerce.

Austria: Austria implemented a five percent tax on online advertising revenue for companies with global annual revenues from all sources of over €750 million (approximately $910 million) and advertising revenues of over €25 million (approximately $34 million) in Austria, effective January 1, 2020. The law contains language that exempts the Austrian state broadcaster ORF from this tax. In June 2020, USTR initiated a Section 301 investigation of Austria's DST over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts

U.S. commerce. The United States and the Austria held bilateral consultations on this investigation in December 2020.

Czech Republic: On June 10, 2020, the budget committee of the lower house of the Czech parliament recommended approval of a DST. 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 (approximately $879 million) and Czech-based revenue of more than 100 million crowns (approximately $4.7 million). The next step in the legislative process is for the bill to go through a second reading in the lower house of the parliament. At this time, it is unclear when that step will occur. In June 2020, USTR initiated a Section 301 investigation of the Czech Republic's consideration of a DST over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce.

France: On July 24, 2019, France enacted a DST 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 $910 million) and revenues over €25 million (approximately $30 million) in France. France collected the first DST payment on November 25, 2019.

On July 10, 2020, USTR announced its determination to take action in the form of additional duties of 25 percent on certain French products with a trade value of approximately $1.3 billion for calendar year 2019 in response to France's adoption of its DST. However, in order to allow further time to resolve this matter, including through ongoing discussions in the OECD, and in recognition of France's agreement to delay collection of its DST, USTR suspended the application of the additional duties for as long as 180 days. On January 6, 2021, USTR announced the suspension of the tariff action in the Section 301 investigation of France's DST in light of the ongoing investigation of similar DSTs in an effort to promote a coordinated response in all such investigations. The United States will continue to engage with France on this issue.

Hungary: In 2017, Hungary temporarily suspended an advertising tax on all advertising services, including those that are made available on the Internet, amid legal proceedings by the Commission, which views the tax as an impermissible form of state aid. The CJEU has not yet ruled on the matter. However, in October 2020, the CJEU's Advocate General published an advisory opinion that recommended that the court uphold the Hungarian tax because EU state aid rules do not preclude progressive taxation on revenue.

Italy: Italy's DST applies a three percent tax to revenues from targeted advertising and digital interface services, subject to an annual threshold of €750 million (approximately $910 million) in global revenues for all services and €5.5 million (approximately $6.7 million) in in-country revenues for covered services. The DST applies as of January 1, 2020, but the payment will not be due until February 16, 2021. In June 2020, USTR initiated a Section 301 investigation of Italy's DST over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce. The United States and Italy held bilateral consultations on this investigation in November 2020.

Spain: In October 2020, the Spanish Parliament passed a DST that imposes a three percent tax on revenues from targeted advertising and digital interface services, subject to an annual threshold of €750 million (approximately $910 million) in global revenues for all services and €3 million (approximately $3.6 million) in in-country revenues for covered services. Tax liability will begin when the law comes into force in January 2021. In June 2020, USTR initiated a Section 301 investigation of Spain's DST over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce. The United States and Spain held bilateral consultations on this investigation in December 2020.

The United States will continue its efforts to reach a multilateral agreement to address the challenges to the international tax system posed by DSTs and an increasingly digitized global economy.

Cybersecurity Standards and 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, U.S. stakeholders are concerned that the result could be a *de facto* mandatory certification requirement, which may adversely impact U.S. market access depending on the requirements for certifications once finalized. Furthermore, the Commission has said it will assess by December 31, 2023, whether some schemes should become mandatory.

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 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, more investors continue to cite general problems with corruption, rule of law, frequently changing legislation, and weak law enforcement. Bulgaria climbed three places from the previous year to 74th place out of 180 countries surveyed in Transparency International's Corruption Perception Index for 2019, but continues to be the lowest-ranked EU Member State in this index. Bulgaria also dropped from 59th to 61st position in the World Bank's 2020 Ease of Doing Business annual ranking. 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 at risk of losing compensation they were contractually promised when they made their initial investments. The Bulgarian Government has cited high domestic energy costs, along with the Commission's state aid regulations, as justifications for its actions. The 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 Bulgarian Government has stressed its commitment to resolving the dispute via good faith negotiations, and has not taken any concrete adverse action with respect to the contracts.

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. Although 2019 saw significant progress toward construction of the gas Interconnector Greece-Bulgaria, which promises to introduce competition into Bulgaria's gas market, the process was delayed in 2020, and the pipeline is now scheduled to come online in 2021. In contrast, the extension of Turk Stream through Bulgaria for the transit supply of Russian gas to Serbia and the region is closed to competition, promising to further strengthen Gazprom's dominant market position in Europe.

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 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 harmed 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 directly in private tertiary education institutions, although they can do so indirectly by investing through subsidiaries based in Cyprus or elsewhere in the EU. 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.

Hungary: In 2020, as part of the measures to offset the adverse economic consequences of the COVID-19 pandemic, parliament passed a new law requiring the reporting of foreign investments to the Minister for Innovation and Technology in 21 strategic sectors, including transportation, health care, energy, tourism, defense, finance, and information technology. The Hungarian Government will grant approvals on the basis of the impact of the notified investment on the public interest, public safety, or public order, among other factors. This legislation applies to investments implemented until June 30, 2021.

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 value-added tax (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 and local authorities 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 2020, the Latvian Parliament approved the creation of specialized economic courts that may improve this process.

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. In July 2020, the Polish Ministry of Development took steps to amend the Wind Turbine Act with draft regulations expected to be initiated in 2021 following a delay in September 2020. The draft regulation includes so-called 10h rule, which prohibits building a wind turbine at a distance of less than 10 times its height from a residential building, but municipalities, under certain conditions, could allow the reduction of this distance to no less than 500 meters.

Since 2017, the Polish tax system underwent many changes 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 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 Polish 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. The perception of corruption, expected changes to fiscal policies, lack of infrastructure, and a lack of predictability in political priorities remain the largest impediments to foreign investment in Romania.

According to the International Monetary Fund, there were 41 changes to Romania's tax code in 2016 and 2017 and 236 changes in 2018. In December 2018, Romania 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.

OTHER ISSUES

EU Imports of Hydrofluorocarbons

The EU Fluorinated Greenhouse Gas Regulation No 517/2014 (F-Gas Rule) places restrictions on the sale of certain refrigeration and air conditioning equipment, foams, and propellants that use fluorinated gases, with a view to reducing their environmental impact. In particular, the F-Gas Rule limits and over time progressively restricts the quantity of hydrofluorocarbons (HFCs) available for use in the EU using a quota system. U.S. stakeholders have expressed concern that insufficient oversight and enforcement of the F-Gas Rule allows for widespread import of HFCs that exceed and are not accounted for under the EU's quota system. These imports negatively affect U.S. exporters of environmentally friendly alternative refrigerants and undermine stated EU F-Gas Rule environment objectives.

EU HFC imports that exceed or are not accounted for in the EU quota system may enter the EU in several ways. Companies may import HFCs above and beyond their quota provided they are intended for re-export and use outside of the EU. In some cases, HFC imports are identified and reported upon entry, but they are either imported by a company that is not an EU quota-holder or the company is importing HFCs in excess of its quota allowance. The United States and stakeholders are concerned that some HFCs labeled for re-export from the EU ultimately end up in the EU market. The United States and stakeholders are also concerned that HFCs are trafficked without the knowledge of customs officials, either hidden or falsely declared on customs forms, or they are imported unaccounted for when already integrated in equipment containing HFCs.

An analysis of public HFC trade flow data commissioned by the European Fluorocarbon Technical Committee concludes that the volume of HFCs placed on the EU market in 2018 as a result of insufficient

oversight and enforcement of the F-Gas Rule could be as high as 33 percent of the legally allowed quota. These HFC imports undermine the demand for and sale of environmentally friendly alternative refrigerants, of which U.S. industry is a significant global supplier. The United States plans to engage with the EU, as well as third country sources of these imports, in an effort to resolve this issue.

GHANA

TRADE SUMMARY

The U.S. trade balance with Ghana shifted from a goods trade deficit of $103 million in 2019 to a goods trade surplus of $115 million in 2020. U.S. goods exports to Ghana were $832 million, down 0.9 percent ($8 million) from the previous year. Corresponding U.S. imports from Ghana were $717 million, down 23.9 percent. Ghana was the United States' 78th largest goods export market in 2020.

U.S. foreign direct investment in Ghana (stock) was $1.6 billion in 2019, a 2.9 percent decrease from 2018.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ghana's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2019 (latest data available). Ghana's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2018. Ghana has bound 15.4 percent of its tariff lines in the World Trade Organization (WTO), with an 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.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Ghana applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 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 Ghanaian 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.

Taxes

Imports are subject to a variety of fees and charges in addition to tariffs. 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. Ghana imposes a 0.2 percent levy on imports from outside African Union (AU) member states to fund its contribution to the AU.

Under the Ghana Export-Import Bank Act, which came into effect in January 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 2024, Ghana imposes a special 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.

Ghana imposes on certain imported items, such as rice, poultry, printed materials, and electricity, a 12.5 percent value-added tax (VAT), a 2.5 percent Ghana Education Trust Fund levy, and a 2.5 percent National

Health Insurance levy, but does not impose these taxes on the same categories of domestically-produced goods. All three of these taxes are imposed on most other imported items as well as their domestically-produced equivalents.

Non-Tariff 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. 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; 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 unnecessary demurrage charges and deterioration of products, resulting 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. This has reduced delays somewhat, although the high rate of physical inspections noted above remains an impediment. Ghana has launched several initiatives since 2017 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. In June 2020, Ghana engaged a single service provider to replace the three vendors that had previously provided the single window trade facilitation system. The new Integrated Customs Management Systems (ICUMS) platform processes documents and payments through a single window that provides an end-to-end trade facilitation and automated customs operation and management system. The ICUMS fee is 0.75 percent of the Free On Board (FOB) value of imports. In addition, Ghana applies a one percent customs processing fee on all duty-free imports.

In September 2020, the GRA announced that the Cargo Tracking Notes (CTN) system, an online platform set up in July 2018 to confirm import authenticity, is no longer a requirement because of the implementation of ICUMS.

Imported vehicles are subject to a customs examination fee of one percent. The GRA Customs Division uses a price list to determine the value of imported used vehicles in order to determine the examination fee. Ghana also reportedly uses the price list in establishing the customs value of imported vehicles to calculate duties. 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 all vehicles. Imported used vehicles more than 10 years old incur an additional charge ranging from 2.5 percent to 50 percent of the cost, insurance, and freight (CIF) value.

Ghana has not yet notified its customs valuation legislation to the WTO, nor has it responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Ghana develops 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 or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis or a certificate of conformance 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. 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 questioned the requirement's legitimate objective given its inconsistency 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. In December 2019, Ghana established new compulsory vehicle safety and emissions standards for both imported and locally produced vehicles. Ghana's standards were modeled broadly on the United Nations Regulations developed by the World Forum

for Harmonization of Vehicle Regulations (1958 Agreement). Through U.S. advocacy with the Government of Ghana, however, the Ministry of Trade and Industry and the GSA incorporated amendments to include U.S. Federal Motor Vehicle Safety Standards self-certification; U.S. National Highway Traffic Safety Administration Blue Ribbon letters; and documentation from the U.S. Environmental Protection Agency. These amendments should allow U.S. automakers continued access to Ghana's new vehicle market. The GSA noted in the issued standards that it would accept and publish other applicable standards not listed, as an amendment or revision after the establishment of their equivalence to the Ghana standards. Ghana notified the WTO of its intention to implement a standards system for imported used vehicles, but this system has yet to be formally adopted. When implemented, all vehicle importers will be required to register with the GSA and present a motor vehicle emissions report, a road worthiness test report from an agency approved by the GSA, and a certificate of conformity.

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.

GOVERNMENT PROCUREMENT

U.S. suppliers of goods and services face difficulties accessing the Ghanaian procurement market. Some large public procurements are conducted with open tendering and allow the participation of foreign firms. However, despite recent Government of Ghana statements 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. In July 2020, the Ghanaian Government issued a directive to public institutions for preferential procurement of locally assembled vehicles. 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 persist in the tender processes across ministries. In a positive example of accountability, the Ghanaian President fired the Chief Executive Officer (CEO) of Ghana's Public Procurement Authority on October 30, 2020, following a 14-month investigation by the Commission for Human Rights and Administrative Justice into the CEO's conflicts of interest. A separate investigation into allegations of corruption, which was referred by the Ghanaian President to the Office of the Special Prosecutor, is ongoing.

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 periodically inspect import shipments and conduct raids on physical markets for counterfeit and pirated goods. 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 only permits the cross-border supply of reinsurance services after local options are exhausted.

The Payment Systems and Services Act of 2019 (Act 987) 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); and, (c) 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). In addition, Section 50 of Act 987 requires electronic payment systems service providers to allow the Bank of Ghana to inspect the "premises, equipment, computer hardware, software, any communication system, books of accounts, and any other document or electronic information which the Bank of Ghana may require in relation to the system."

Telecommunications Services

Ghana has required a minimum rate of $0.19 per minute for terminating international calls into Ghana since 2009, which is significantly higher than the prior average rate. The 2009 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.

At times, foreign investors experience difficulties and delays in securing required work visas for their non-Ghanaian employees. The process for obtaining required such visas 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. Foreigners 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 may encounter a politicized business community and a lack of transparency in certain government operations. Entrenched local interests can derail or delay new entrants. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption among government and business figures also remains a concern. Ghana's anticorruption laws provide Ghanaian law enforcement and judicial bodies robust legal powers to fight corruption in the country, but these laws are not enforced consistently.

Foreign investors have expressed concerns regarding respect for contract sanctity in Ghana, including threats to abrogate contracts, unilateral changes to contract terms, and forced contract renegotiations with the government and its state-owned enterprises. The concerns are undermining confidence in Ghana's investment climate.

Mining

Ghana restricts the issuance of mining licenses based on the size of the mining operation. Pursuant to the Minerals and Mining Act, 2006 (Act 703), foreign investors are restricted from obtaining a small-scale mining license for mining operations of an area less than or equal to 25 acres (10 hectares). In 2019, the criminal penalty for non-compliance with the regulation on mining or promoting mining without a license, and the buying or selling of minerals without a license, was increased from a maximum prison sentence of five years, to a minimum of 15 years for a Ghanaian and 20 years for a non-Ghanaian, with a maximum sentence of 25 years. The change was intended to discourage unlicensed small-scale mining. 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 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 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, which raises concerns of potential corruption and favoritism in the selection of local equity partners in government-approved concessions or contracts. 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.

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.

There are specific provisions in the mining regulations that require mining entities to procure goods and services from local sources. The Minerals Commission publishes a Local Procurement List, which identifies items that must be sourced from Ghanaian-owned companies, whose directors must all be Ghanaians. 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, and 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.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $2.0 billion in 2020, a 28.6 percent decrease ($806 million) over 2019. U.S. goods exports to Guatemala were $5.9 billion, down 14.0 percent ($953 million) from the previous year. Corresponding U.S. imports from Guatemala were $3.8 billion, down 3.7 percent. Guatemala was the United States' 35th largest goods export market in 2020.

U.S. exports of services to Guatemala were an estimated $1.6 billion in 2019 and U.S. imports were $1.3 billion. Sales of services in Guatemala by majority U.S.-owned affiliates were $818 million in 2018 (latest data available), while sales of services in the United States by majority Guatemala-owned firms were $14 million.

U.S. foreign direct investment (FDI) in Guatemala (stock) was $746 million in 2019, a 1.8 percent increase from 2018. There is no information on the distribution of U.S. FDI in Guatemala.

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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, 100 percent of U.S. originating consumer and industrial goods enter Guatemala duty free. 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. Guatemala is required under the CAFTA–DR to make TRQs available on January 1 of each year. Guatemala monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

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 20 or more days. U.S. industry reports that many investigations are ongoing, and, to date, very few have been resolved in favor of the importer, and appeals involve a lengthy process of up to four years. U.S. companies have also raised concerns about the lack of transparency in the appeals process. To address the issue, the U.S. Government engaged in bilateral discussions with Guatemala during 2020.

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 a product's tariff classification. Upon tariff reclassification, SAT has rejected the claim of origin and assessed the higher non-preferential rate. The issue often results from outdated Guatemalan tariff schedules and SAT's misapplication of preferential tariff rates under its free trade agreements. On December 28, 2020, the Government of Guatemala updated and established a single internal tariff schedule to simplify and facilitate SAT's application of preferential tariffs under the CAFTA–DR.

SAT's consistent rejection of origin certifications has in the past negatively affected imports of U.S. goods. 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. In April 2019, SAT issued a memorandum instructing customs officials on how to correctly apply the certification of origin rules under the CAFTA–DR, which appears to have addressed concerns raised by importers. According to SAT's instructions, if a certification of origin is rejected, SAT must issue a resolution explaining the reasons for the rejection. The instructions also clarify that importers can resubmit corrected documents. However, SAT limits the timeframe for corrections to 15 days from the SAT inquiry, increasing denials of preferential treatment during post importation audits for even minor issues. Importers have expressed concern that administrative barriers at SAT and misapplication of tariffs and fees will persist as long as the Government of Guatemala pressures SAT to generate revenue to supplement tax revenue shortfalls.

Guatemala ratified the WTO Trade Facilitation Agreement (TFA) on March 8, 2017. Guatemala's contact information regarding enquiry points (TFA Article 1.3) was due to the WTO on February 1, 2020, 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 (MSPAS) 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. In addition, processed meat and products require import permits from both the Ministry of Agriculture, Livestock, and Feed (MAGA), and MSPAS, even after registration.

Sanitary and Phytosanitary Barriers

Guatemala published an official list of quarantine pests in November 2016. Fumigated consignments, which pose no or very low risk, may be denied entry due to the presence of quarantine pests without consideration of additional or alternate treatments that would allow the product to safely enter Guatemala. This has resulted in unnecessary, inappropriate, and expensive mitigation measures affecting U.S. products. In addition, U.S. companies have complained that the Intraregional Organization for Plant and Animal Health (OIRSA), which has been delegated the responsibility for both the quarantine inspection and fumigation services by MAGA, often breaks the cold chain of frozen containers to inspect for pests that are already dead, or overzealously searches for untreated wooden pallets. U.S. business complains that when treatments are required, products are unloaded, and the cold chain is broken, resulting in additional fees and damage to the cargo. The United States raised this issue during the 2019 meeting of the CAFTA–DR Committee on Sanitary and Phytosanitary Matters.

SUBSIDIES

Export Subsidies

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

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. Foreign suppliers must appoint a national representative to represent the interest of the company in Guatemala.

Guatemala is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Guatemala remained on the Watch List in the Special 301 Report. The number of intellectual property (IP) enforcement raids and convictions has declined significantly in recent years, particularly in 2020. 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. Despite the declines in enforcement noted above, the United States recognizes certain raids conducted in late 2019 where prosecutors and other authorities seized suspected counterfeit medicines and closed a pharmacy that sold such products. While there have been some recent efforts to address cable piracy, stakeholders continue to report that problems remain. The United States urges Guatemala to ensure that its IP enforcement agencies receive sufficient resources and 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 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.

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.

OTHER BARRIERS

Bribery and Corruption

U.S. stakeholders have expressed concerns that corruption in the Guatemalan Government, including in the judiciary, continues to constrain successful investment in Guatemala. Administrative and judicial decision-making is widely believed to be 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. Guatemala is a member of the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

HONDURAS

TRADE SUMMARY

The U.S. goods trade surplus with Honduras was $347 million in 2020, a 43.7 percent decrease ($269 million) over 2019. U.S. goods exports to Honduras were $4.2 billion, down 22.7 percent ($1.2 billion) from the previous year. Corresponding U.S. imports from Honduras were $3.9 billion, down 20.0 percent. Honduras was the United States' 44th largest goods export market in 2020.

U.S. exports of services to Honduras were an estimated $1.3 billion in 2019 and U.S. imports were $765 million. Sales of services in Honduras by majority U.S.-owned affiliates were $684 million in 2018 (latest data available), while sales of services in the United States by majority Honduras-owned firms were $3 million.

U.S. foreign direct investment in Honduras (stock) was $1.3 billion in 2019, a 50.7 percent increase from 2018. U.S. direct investment in Honduras is led by manufacturing, information services, and professional, scientific, and technical services.

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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, as of January 1, 2015, 100 percent of U.S. consumer and industrial goods enter Honduras duty free. 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. Honduras will eliminate tariffs on rice and chicken leg quarters by 2023, and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Honduras 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 the timely issuance of these permits.

Non-Tariff 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. These local content requirements disadvantage U.S. exports of pork to Honduras.

Customs Barriers and Trade Facilitation

In July 2016, Honduras ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). Current compliance priorities under the TFA are standing up the National Trade Facilitation Committee (NTFC) and institutionalizing an Authorized Economic Operator (AEO) scheme. The NTFC has a critical role in trade facilitation and business competitiveness, including objectives to identify and address regulatory and procedural bottlenecks in the trade process, encourage interagency 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. However, inefficient agency coordination and publication of information piecemeal across ministerial websites reduce the efficacy and transparency of the regulatory process in Honduras.

In July 2020, AAH requested technical support from the United States Agency for International Development (USAID) to establish an AEO program. USAID has developed a proposal for design and rollout as well as advising on structuring the AEO within AAH. Upon meeting supply chain security standards, operators will enjoy expedited or immediate clearance of goods among other trade advantages that reduce transport costs and times.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

Product Registration

Product registration for marketing products in Honduras has traditionally been cumbersome and time consuming. The U.S. Government has provided technical assistance to the Government of Honduras to create a more streamlined system. In 2017, Honduras shifted management of product registration from the Ministry of Health to the Sanitary Regulatory Agency (Agencia de Regulación 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 had addressed the backlog. Despite the improvements, product registration is still a burdensome process 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

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. However, the CAFTA–DR contains provisions 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 distribution and sale of counterfeit and pirated goods. Additionally, the United States continues to urge Honduras 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 monitor Honduras's implementation of its IP obligations under the CAFTA–DR.

SERVICES BARRIERS

U.S. stakeholders 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

Many U.S. stakeholders have expressed concerns that corruption in the government, including in the judiciary, continues to constrain successful investment in Honduras. Administrative and judicial decision-making is widely believed to be 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.

Honduras is a member of the United Nations Convention against Corruption and the Inter-American Convention against Corruption. 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. stakeholders continue to report 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 $16.1 billion in 2020, a 38.4 percent decrease ($10.0 billion) over 2019. U.S. goods exports to Hong Kong were $24.0 billion, down 22.1 percent ($6.8 billion) from the previous year. Corresponding U.S. imports from Hong Kong were $7.9 billion, up 67.6 percent. Hong Kong was the United States' 15th largest goods export market in 2020.

U.S. exports of services to Hong Kong were an estimated $14.2 billion in 2019 and U.S. imports were $11.6 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $31.1 billion in 2018 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $7.0 billion.

U.S. foreign direct investment in Hong Kong (stock) was $81.9 billion in 2019, a 2.6 percent increase from 2018. U.S. direct investment in Hong Kong is led by nonbank holding companies, manufacturing, and information services.

OVERVIEW

Hong Kong is a special administrative region (SAR) of China. Hong Kong is also a separate customs territory from China, and the Hong Kong Basic Law states that it can enter into international agreements in commercial, economic, and certain legal matters. Hong Kong is a separate and founding member of both the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

On July 14, 2020, in response to the Chinese Government's imposition of a national security law on Hong Kong, which went into effect on June 30, 2020, the U.S. President issued Executive Order 13936. The Executive Order directed U.S. Government agencies to commence all appropriate action to carry out the policy of the United States to suspend or eliminate different and preferential treatment given to Hong Kong in relation to China, which led changes to certain export control exceptions, termination of reciprocal shipping income tax exemption treatments, and a requirement that imported goods produced in Hong Kong be marked to indicate that their origin is "China," among other actions.

IMPORT POLICIES

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. Effective January 1, 2021, any person who intends to conduct transboundary movement of waste plastics must obtain a permit or prior written consent from the Environmental Protection Department. Import and export of certain waste plastics between a party and a non-party, such as the United States, is prohibited following the January 1, 2021 entry into force of the Plastic Waste Amendments to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides strong intellectual property (IP) protection and enforcement, and for the most part has strong IP laws in place. In June 2020, Hong Kong passed a Trade Marks Ordinance that will enable application of the Madrid Protocol in Hong Kong. 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. However, Hong Kong's

failure to modernize its copyright system has allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices. While the Hong Kong Customs and Excise Department investigates IP crimes and routinely seizes IP-infringing products arriving from 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 $23.8 billion in 2020, a 1.7 percent increase ($389 million) over 2019. U.S. goods exports to India were $27.4 billion, down 20.1 percent ($6.9 billion) from the previous year. Corresponding U.S. imports from India were $51.2 billion, down 11.3 percent. India was the United States' 12th largest goods export market in 2020.

U.S. exports of services to India were an estimated $24.3 billion in 2019 and U.S. imports were $29.7 billion. Sales of services in India by majority U.S.-owned affiliates were $33.1 billion in 2018 (latest data available), while sales of services in the United States by majority India-owned firms were $18.3 billion.

U.S. foreign direct investment in India (stock) was $45.9 billion in 2019, a 8.1 percent increase from 2018. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005, and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India.

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 non-tariff barriers that impede imports of U.S. products into India. While the Indian Government has pursued ongoing economic reform efforts, it also continues to promote programs such as "Make in India" that favor domestic production over importation. Additionally, in May 2020, Prime Minister Narendra Modi announced the "Self-Reliant India" (*Atmanirbhar Bharat*) initiative to increase self-sufficiency by promoting domestic industry and reducing reliance on foreign suppliers.

Tariffs and Taxes

Tariffs

India's average Most-Favored-Nation (MFN) applied tariff rate was 17.6 percent in 2019 (latest data available). India's average MFN applied tariff rate was 38.8 percent for agricultural products and 14.1 percent for non-agricultural products in 2019 (latest data available). India has bound 74.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 50.8 percent.

In addition to tariffs, India, in 2018, 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 17.6 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, India 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 2019 averaged 17.6 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.*, poultry, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, 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 Indian Government took advantage of this tariff flexibility in both the 2019/2020 and 2020/2021 budgets, when it increased tariffs in each budget on approximately 70 product categories, including key U.S. exports in the agricultural, information and communications technology, medical device, paper products, chemicals, and automotive parts sectors, with no warning or public consultation process. 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) program, India implemented retaliatory tariffs, ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including: almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic regents, 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 U.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 engaging in unjustified retaliation designed to punish American workers and companies. On July 3, 2019, the United States launched a WTO dispute settlement proceeding against India, challenging India's retaliatory tariffs. A WTO panel was established in October 2019, and the panel proceeding is ongoing.

India maintains 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.

Non-Tariff Barriers

India maintains various forms of non-tariff 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.

While the official website of the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry (MOCI) maintains a list of restricted items, India often fails to observe other transparency requirements, such as publication of timing and quantity restrictions in the *Gazette of India* and notification to relevant WTO committees.

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. The import permit application requires the applicant to verify that the imported non-insecticidal boric acid is not for resale, which prevents independent traders from importing boric acid and limits imports to those directly by a manufacturer. 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 India later rescinded the restrictions because of its inability to deploy the relevant software to support the action, uncertainty remains regarding the future implementation of these restrictions. The United States has urged India to eliminate its import licensing requirements in this sector in meetings of the WTO Committee on Import Licensing and through the TPF.

In order to manage domestic oversupply, 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), mung beans (Moong or Vigna mungo), and moong and urad lentils. In April 2018, the Indian Government extended these quantitative restrictions to include peas. India's MOCI again notified quantitative restrictions for the Indian fiscal year 2020/2021 of 150,000 metric tons (MT) for peas and mung beans as well as 400,000 MT for black matpe and pigeon peas. Imports of peas are restricted to the port of Kolkata and are subject to a minimum import price.

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 at least 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.

Medical Device Price Controls

As of April 1, 2020, India requires all medical devices to be registered and regulated as "drugs" under the provisions of the Drugs (Prices Control) Order, 2013. Four devices—cardiac stents, drug eluting stents, condoms, and intra-uterine devices—continue to be 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.

In February 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 (DPCO) in August 2017. In August 2019, NPPA moved knee implants to price monitoring under paragraph 20 of the DPCO, allowing for a 10 percent price increase. However, NPPA reinstated the ceiling price on knee implants under paragraph 19 of the DPCO on September 15, 2020. The remaining medical devices are under no price regulation. U.S. companies have raised concerns regarding these actions because price controls for cardiac stents and knee implants do not differentiate on the basis of technological innovation and limit U.S. companies' access to the Indian market.

Ethanol Import Restrictions

India prohibits the import of ethanol for fuel use. In August 2018, the DGFT 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. In May 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 also requires that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

In June 2018, the Indian Government released the National Policy on Biofuels 2018, in which it set a target of 20 percent blending of ethanol with gasoline and a target of five percent blending with biodiesel by 2030. In 2020, the average ethanol blending rate in gasoline was expected to reach 5.2 percent, up from 4.5 percent in 2019.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

The United States has discussed technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) issues with India in bilateral meetings and during the WTO Committee on SPS Measures (WTO SPS Committee) and WTO Committee on TBT (WTO TBT Committee) meetings, as well as on the margins of those committee meetings.

Technical Barriers to Trade

Toys – Quality Control Order

On January 30, 2020, India notified the "Toys (Quality Control) Order, 2019" (QCO) to the WTO (IND/131). On February 27, 2020 the Gazette of India published the Ministry of Commerce and Industry's

Order noting a September 1, 2020 implementation date. The six-month transition period did not provide enough time for U.S. manufacturers to meet the QCO requirements given the disruptions in global trade and manufacturing due to the COVID-19 pandemic. The QCO requires toys to conform to Indian Standard (IS) 9873 (based on the ISO toy standard) and IS 15644 and bear the Standard Mark under a license from the Bureau of Indian Standards (BIS), among other requirements including factory audits and numerous new fees. At the February, May, and October 2020 WTO TBT Committee meetings, the U.S. Government raised concerns regarding the QCO. On September 16, India published an Order in the Gazette which postponed the implementation of the Toy QCO from September 1, 2020 to January 1, 2021. In January 2021, U.S. industry reported that foreign manufacturers continue to lack certification because pandemic-related travel restrictions have prevented Indian officials from conducting factory audits. Until India provides a solution to the requirement for foreign manufacturing audits, US toy manufacturers are unable to comply with the QCO and therefore cannot export toys to India.

Cosmetics – Registration Requirements

In November 2018, India's Ministry of Health and Family Welfare invited comments on a new draft of the Cosmetics Rules. U.S. stakeholders provided comments encouraging a risk-based regulatory framework without unnecessary pre-approval requirements, which aligns with international standards and industry best practices, with a reasonable timeframe for implementation.

In December 2018, India increased registration fees for importers of cosmetics. As a result, the registration fee is $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 in February 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, in May 2014, had banned domestic cosmetic testing on animals through a Ministry of Health and Family Welfare notification in the *Gazette of India*, dated May 21, 2014. U.S. exporters have reported difficulties proving that their cosmetics products comply with the animal testing ban and have yet to receive guidelines from the Indian Government on how to do so.

Verification of U.S. Country of Origin Certificates

On July 1, 2020, the Food and Safety Standards Authority of India (FSSAI) placed temporary holds on consignments of a wide range of U.S. food and agricultural products, including almonds and apples, questioning the validity of the Country of Origin (COO) certificates accompanying those products. If FSSAI formally implements a policy that does not accept COO certificates from U.S. chambers of commerce or does not recognize documents issued by freight forwarders and shippers, a significant portion of U.S. agricultural exports could be prevented from entering the Indian market.

Labeling Requirements

On October 2, 2020, FSSAI notified to the WTO an amendment to the Food Safety and Standards (Packaging and Labeling) Regulations, 2011, which modifies labeling requirements for packaged foods containing sweeteners. The amendment requires warning labels for various kinds of sweeteners stating "Not recommended for children, pregnant and lactating mothers," and "Contains non-caloric sweetener and for calorie conscious." The United States submitted comments to India's WTO TBT Enquiry Point on the amendment and continues to monitor India's plans for finalizing changes to the amendment.

In July 2019, the 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 red colored nutrient labels stating "High in Fat, Sugar and Salt" based on thresholds established by the Indian Government. The 2019 amendment also introduced a warning statement requirement for alcoholic beverages to state that "consumption of alcohol is injurious to health." The United States submitted comments to India's WTO TBT Enquiry Point on the proposed changes in September 2019 and raised concerns at the November 2019 and February 2020 TBT Committee meetings. India is currently considering further revisions to its regulation. The United States will continue monitoring this issue and engage as appropriate.

Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019

In July 2019, FSSAI published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019, and notified to the WTO. The 2019 amendment revised FSSAI's 2018 mandatory alcoholic beverage standards, which entered into force in April 2019. The United States submitted comments to India's WTO TBT Enquiry Point on the proposed changes in September 2019. In June 2020, FSSAI issued a directive to operationalize certain provisions of the standards, including the addition of non-alcoholic beer as a separate product category and permitting the use of new colors and additives in distilled spirituous beverages. 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.

Rejection of USDA Certified Organic Consignments

Between August and September 2020, FSSAI detained at least two U.S. organic shipments at port, asserting the shipments could not be marketed as organic in India without an equivalency agreement between the Agricultural and Processed Food Products Export Development Authority (APEDA) and the U.S. Department of Agriculture (USDA) National Organic Program (NOP).

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 a NOC.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products intended for food be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, and that exporting countries certify to these conditions. 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 consumed feeds with ruminant protein and those derived from animals that have not consumed such feeds. India rejected the proposals. The United States continues to press the Indian Government to provide greater 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 raising the concerns of 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, even if the products have already been certified by accredited international laboratories. In 2017, the coverage of the CRO increased to 44 product categories. In 2020, the coverage of the CRO was again expanded to include 12 additional product categories, though India has delayed implementation of this expansion till April 2021. U.S. industry reports that MEITY plans to continue to expand the CRO coverage. 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 and 2020.

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 the Codex Alimentarius Commission. 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

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 Indian Government to streamline clearances for inbound consignments and to improve the ease of doing business. Along with SWIFT, the CBIC also introduced an Integrated Risk Management facility for partner government agencies. The facility is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that that foods that present actual food safety risks are tested while goods that pose little to no risk can avoid becoming subject to unnecessary procedures by inspection agencies. In the modified Food Import Regulations, published September 2, 2016, FSSAI stated that 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.

FSSAI Order on Non-Genetically Modified (Non-GM) and GM-Free Certificates

On August 21, 2020, the FSSAI released an order requiring a non-GM origin and "GM free" certificate from the competent authority in the exporting country to be included with imported food shipments that contain any of 24 listed products, effective March 1, 2021. India has not provided any scientific or risk-based justification for the requirement. According to FSSAI, the order is to ensure that only non-GM products are imported, pending new testing protocols and forthcoming regulations in genetically engineered (GE) food products. U.S. apples—exports of which to India were valued at $57 million in 2019—will be the primary export that is immediately affected by the restriction, facing a de facto ban. On September 2, 2020, India notified the order to the WTO TBT Committee. The United States and several other countries have pressed India to rescind the requirement in comments submitted through India's TBT Enquiry Point and on the floor of the October 2020 WTO TBT Committee meeting and the November 2020 WTO SPS Committee meeting. The United States will continue to engage the Government of India, including FSSAI, on the order.

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 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. The Indian Government has yet to decide 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 hamper 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 GE 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 DAHDF and the USDA 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 Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 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. The proceedings are ongoing.

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 and 2020, the United States and India on several occasions postponed both the issuance of the arbitrator's decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding, while the parties discussed potential resolution of the dispute. 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. During the past few years, GEAC has received 11 applications from Indian importers to import U.S. DDGS. 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. 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. The Sub Committee submitted recommendations for comment and approval to the GEAC in November 2019. To date, GEAC has not officially confirmed that it 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, in December 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 regulated 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 do not appear to be 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 the *Gazette of India* 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.

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. In April 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

India's Foreign Trade Policy (FTP) 2015-2020, announced in April 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 rates. These range from 2 percent to 5 percent, with temporary increases as high as 20 percent. MEIS provides export subsidies for a wide range of agriculture and other goods, 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 five 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 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 Scheme, Software Technology Park Scheme, and Bio-Technology Park 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, 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.

Upon graduation from Annex VII(b) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) in 2017, India was required to eliminate all export subsidies. In 2018, the United States commenced WTO dispute settlement proceedings against India concerning India's continued export subsidy schemes. 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 in November 2019.

India has begun to phase out the MEIS program, under which reportedly no new benefits could be claimed starting January 1, 2021. The MEIS program is being replaced with the Remission of Duties and Taxes on Export Product (RoDTEP) program, for which India has not published implementing measures as of the date of this report but has stated that benefits would be available for exports made on or after January 1, 2021. RoDTEP is 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 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 it has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. For example, India authorized the exportation of 6.5 million metric 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 WTO 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, in August 2019, the Indian 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 six MMT. 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 Indian Government and distributed through India's public distribution system. However, in crop year 2019/2020, the Indian Government purchased 1.8 million metric tons (10.51 million 170 kg bales) of cotton through announced MSP operations, at a cost of nearly $3.2 billion. India'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.

In May 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, in November 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, later in November 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 the state-owned Public Sector Undertakings uses over 150 different contract formats, each with different qualification criteria, selection processes, and financial requirements. India 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 September 2020, the Indian Ministry of Defense announced the final Defense Acquisition Procedures (DAP) 2020, which replaces the Defense Procurement Procedure of 2016 and is effective from October 1, 2020 until September 30, 2025. Under the DAP 2020, acquisition categories of "Buy (Indian)," "Buy (Indian – Indigenously Designed Developed and Manufactured)" (also referred to as "Buy (Indian-IDDM)"), and "Buy and Make (Indian)" have an indigenous content requirement.

India's National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information communications technology and clean energy). Consistent with this approach, India issued the Preferential Market Access notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. Subsequently, in June 2017, the Department of Industry Policy and Promotion 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.

On June 4, 2020, the Department of Promotion of Industry and Internal Trade (DPIIT) issued a revision to its 2017 procurement order, titled Public Procurement (Preference to Make in India) Order 2020. The rule was updated again on September 19, 2020. The Order took immediate effect and instructs each nodal ministry or department to draft a follow-on procurement order that favors domestic suppliers. Though the new Order does not appear to impact tenders or procurements announced prior to June 4, 2020, it will hinder U.S. industry's ability to participate in central government tenders.

Moreover, the August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under $31 million. Any reductions of the minimum local content requirement cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of local content that will be used if the value is equal to or greater than 10 Crore ($1.36 million). In addition, in the September 19, 2020 update, the minimum local content requirement was expanded, permitting Ministries and Departments to mandate higher local content percentages that could be used to benefit Indian suppliers and prevent U.S. companies from participating in government tenders.

On September 23, 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by "Class 1 local suppliers" irrespective of the purchase value. The Ministry of Power also reserved 86 products for local procurement through a similar order published on September 17, 2020.

On April 29, 2020, the MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the local content requirement of 50 percent, irrespective of purchase value. A September 7, 2020 MEITY notification specifies the mechanism for calculation of local content for: (1) Desktop PCs; (2) Thin clients; (3) Computer monitors; (4) Laptop PCs; (5) Tablets; (6) Dot Matrix Printers; (7) Contact and Contactless Smart Cards; (8) LED Products; (9) Biometric Access Control/Authentication Devices; (10) Biometric Finger Print sensors; (11) Biometric Iris Sensors; (12) Servers; and, (13) Cellular mobile phones.

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 Special 301 Report due to concerns over weak intellectual property (IP) protection and enforcement. The 2020 Review of Notorious Markets for Counterfeiting and Piracy includes physical and online marketplaces located in or connected to India. The United States and India have continued to engage on a 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 uneven in India, with some states conducting enforcement activities and others falling short in this regard.

In the field of copyright, procedural hurdles, problematic policies, and effective enforcement remain concerns. In February 2019, the Cinematograph (Amendment) Bill, which would criminalize illicit camcording of films, was tabled in Parliament. The bill still awaits approval by Parliament. The expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection and complicated the market for music licensing. In June 2020, the Copyright Board was merged with the Intellectual Property Appellate Board and became fully functional. The lack of a functional copyright board had previously created uncertainty regarding how IP royalties were collected and distributed. The United States is monitoring whether these issues will persist with a functional Copyright Board in place.

In 2019, the DPIIT proposed draft Copyright Amendment Rules that would broaden the scope of statutory licensing to encompass not only radio and television broadcasting but also online broadcasting, despite a high court ruling earlier in 2019 that held that statutory broadcast licensing does not include online broadcasts. If implemented, the Amendment Rules would have severe implications for Internet content-related right holders.

In the area of patents, a number of factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. Patent applications continue to face expensive and time consuming pre- and post-grant oppositions and excessive reporting requirements. In October 2020, India issued a revised "Statement of Working of Patents" (Form 27). The United States is monitoring whether the revision addresses concerns previously raised by innovators over Form 27's burdensome nature and required disclosure of 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, especially patents for agriculture biotechnology and pharmaceutical products. In particular, the United States 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 terms of progress in patent examination, India issued a revised Manual of Patent Office Practice and Procedure in November 2019 that requires patent examiners to look to the World Intellectual Property Organization's Centralized Access to Search and Examination (CASE) system and Digital Access Service (DAS) to find prior art and other information filed by patent applicants in other jurisdictions.

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.

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 Intellectual Property Rights (IPR) Policy called for trade secrets to serve as an "important area of study for future policy development," but India has not yet prioritized this work.

SERVICES BARRIERS

The Indian Government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted and, in the case of legal services, 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 $700,000) in order to downlink one content channel and an additional 25 million rupees (approximately $350,000) 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 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 foreign direct investment (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 whose total investments in plant and machinery are under $2 million each. 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. In February 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 continue to face a number of barriers in India, including: limitations on establishing independent campuses and issuing degrees; a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create potential for double taxation; difficulties repatriating salaries and income from research; limitations on employing foreign faculty; and lack of autonomy in designing curriculum.

The Union Cabinet of India approved a new National Education Policy (NEP) on July 29, 2020, to replace the three-decades old National Education Policy of 1986. The NEP 2020 is meant to provide an overarching vision and comprehensive framework for both school and higher education across India. The NEP contains a provision stating that institutions from among the top 100 universities in the world will be facilitated to operate in India, and that a separate legislative framework will be put in place to provide these institutions with more autonomy in regulatory and governance matters. Under the NEP, foreign universities would be allowed to set up campuses in India through adoption of a legislative framework. The NEP proposes a new regulator that would replace several existing regulatory bodies and have authority to regulate, set standards for, and accredit higher education institutions, and also proposes to ensure a level playing field for public and private players. The NEP will come into effect once implementing laws and regulations are enacted, but it has not yet been presented in the Indian Parliament as of the date of this report.

Financial Services

Banking 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.

In August 2020, the RBI issued a notification that limits the ability of banks to work with current accounts by prohibiting offering such accounts to customers who have availed themselves of overdraft or cash credit and restricting debits to the overdraft or cash credit account of a borrower to whom the bank's exposure is less than 10 percent of the entire banking system's exposure to that borrower. Foreign banks operating in India have expressed concerns that the measure will adversely affect their ability to conduct business not only with current accounts but also in related areas such as trade finance. The RBI's new rule requires customers to maintain their current accounts only at banks from which they have sourced loans, but foreign banks hold a much smaller share of India's loan market. While the RBI's stated goal is to improve financial transparency and reduce the scope for fraud and bad loans, U.S. and other foreign banks are concerned that the new rule will disadvantage them, as it could incentivize customers to migrate their working capital accounts to India's public sector banks.

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) promulgated guidelines on this "Indian control" requirement in October 2015, which 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. The United States continues to urge India to eliminate the foreign equity cap and remove the management and control requirements for insurance companies.

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.

The United States continues to closely monitor policy developments in India with respect to electronic payments services and continues to emphasize the importance of facilitating an open and competitive environment with a level playing field for foreign and domestic suppliers of electronic payment services. The United States has raised concerns relating to informal and formal policies that appear to favor Indian domestic suppliers over foreign suppliers, including concerns relating to plans for the National Common Mobility Card scheme, for which the Indian Government is considering using a domestic proprietary QR code standard, which could disadvantage foreign suppliers. Most recently, on November 5, 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent for foreign electronic payment service suppliers processing online payments made

through India's United Payment Interface, which is owned and operated by NPCI. The United States understands that this policy, which has been approved by the RBI, was finalized without full consultation with foreign market participants including U.S. suppliers whose business will negatively affected.

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 and international legal issues.

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 have created uncertainty and business losses for U.S. providers of architectural and related services.

Telecommunications Services

Barriers to Entry

Approval by the Government of India 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 Indian Government 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

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 the Personal Data Protection Bill 2019 in the Indian Parliament. 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. Further, in the absence of standalone trade secret legislation, there is little recourse for firms in the instance of misappropriation of their sensitive information. 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 non-personal data, which if adopted may result in policies requiring localization of non-personal data and mandatory data sharing. 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 business sensitive information, trade secret information, other 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 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 providers 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 75 separate major shutdowns in 2020, following more than 106 in 2019. Jammu and Kashmir experienced a 213-day Internet shutdown starting in August 2019, which was one of the longest Internet shutdowns by a democracy. 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 may 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.

Digital Taxation

In 2017, India began assessing a six 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 tax principles, which generally provide that mechanisms should be developed 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.

The Fiscal Year 2020-2021 budget, announced in March 2020, included an expansion of the equalization levy, adding a two percent digital services tax on foreign electronic commerce and digital services providers. Neither the original level nor the 2020 expansion applies to firms that are established in India. The change was enacted without prior notification or opportunity for public comment. Technology firms have raised concerns that the definitions of "e-commerce operator" and "e-commerce supply or services" are broad in scope and are likely to cover many digital transactions, including the sale of data.

The United States opposes proposals by any country that would single out U.S. digital companies. In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation into India's two percent digital services tax over concerns that the tax, which primarily applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory, and burdens or restricts U.S. commerce. The United States and India held bilateral consultations on the investigation in November 2020. In January 6, 2021, USTR issued findings that India's digital services tax, as well as similar taxes adopted by certain other countries, discriminates against U.S. companies, is inconsistent with prevailing principles of international taxation, and burden or restricts U.S. commerce.

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 U.S. 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 applies export duties on numerous raw materials used in the production of metals, in particular steel and aluminum. These include a 30-percent duty on exports of iron ore and concentrate with iron content above 58 percent; a 15-percent duty on exports of aluminum ore; and, a 30-percent duty on exports of chromium ore. These various duties, along with other export measures, provide cost advantages to India's domestic metals producers, while distorting international markets for key raw materials used in steel and aluminum production.

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 Indian 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 $12.8 billion in 2020, a 3.2 percent increase ($397 million) over 2019. U.S. goods exports to Indonesia were $7.4 billion, down 4.1 percent ($317 million) from the previous year. Corresponding U.S. imports from Indonesia were $20.2 billion, up 0.4 percent. Indonesia was the United States' 33rd largest goods export market in 2020.

U.S. exports of services to Indonesia were an estimated $2.8 billion in 2019 and U.S. imports were $1.1 billion. Sales of services in Indonesia by majority U.S.-owned affiliates were $2.8 billion in 2018 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $120 million.

U.S. foreign direct investment in Indonesia (stock) was $12.2 billion in 2019, a 18.7 percent increase from 2018. U.S. direct investment in Indonesia is led by mining, manufacturing, and nonbank holding companies.

TRADE AGREEMENTS

The United States–Indonesia Trade and Investment Framework Agreement

The United States and Indonesia signed a Trade and Investment Framework Agreement (TIFA) on July 16, 1996. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Indonesia.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Indonesia's average Most-Favored-Nation (MFN) applied tariff rate was 8.1 percent in 2019 (latest data available). Indonesia's average MFN applied tariff rate was 8.7 percent for agricultural products and 8.0 percent for non-agricultural products in 2019 (latest data available). Indonesia has bound 96.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.1 percent.

Over the last decade, Indonesia 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. 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 free trade agreement schedules, if the Free On Board customs value of the good is more than $75 but less than $1,500. Indonesia maintains tariff rates as a high as 10 percent on certain information and communication technologies, including certain types of telecommunications equipment as well as servers.

Taxes

U.S. companies continue to express concerns that MOF's Directorate General of Taxes' tax assessment process is arbitrary. Such concerns include 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 consumer and 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. As of March 2021, 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. However, 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 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. 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.

Non-Tariff 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 Minister 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.*)

In August 2020, MOT issued Regulation 68/2020 requiring import approvals for footwear, electronic devices, and bicycles (except such products imported for market testing or after sales service purposes) with the stated goal of reducing the volume of consumer goods entering Indonesia. Under this regulation, importers are also required to submit an import plan a year in advance, obtain a surveyor report, and undergo product verification at designated ports.

Import Licensing for Agricultural Products

Indonesia maintains 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. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. concerns. On December 22, 2016, the WTO

issued the panel report, finding for the United States and co-complainant New Zealand on all 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. 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. 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.

Indonesia has amended its import licensing requirements several times since the Appellate Body ruling, most recently through the issuance of Minister of Agriculture (MOA) Regulation 2/2020. Under this regulation, imports of horticultural products from countries with a food safety system recognized by MOA are exempt from the requirement to provide certain quality and safety certificates. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year. Nevertheless, Indonesia continues to subject imports, particularly horticultural products, to its import licensing regime.

On November 2, 2020, Indonesia enacted the "Job Creation Omnibus" (Law 11/2020), which amends import licensing provisions contained in the Food Law, Animal Husbandry Law, Farmer Protection and Empowerment Law, and the Horticulture Law. The new legislation now requires a general business license for imports of horticultural, feed, meat, and dairy products. Notably, the legislation also appears to remove the legal basis for requiring MOA import recommendations and MOT import licenses for horticultural products. Businesses are awaiting implementing regulations for further detail on how these changes will be implemented.

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 regarding how pharmaceutical products are selected for listing on the Indonesian online public procurement catalog system, how price caps are determined, and whether and for how long such products will remain listed. The United States will continue to engage Indonesia on this issue and has requested that the Ministry of Health (MOH) and the National Public Procurement Agency (LKPP) discuss these issues with U.S. stakeholders.

The United States continues to have concerns about barriers to Indonesia's market for pharmaceutical products and medical devices. MOH Regulation 17/2017 mandates that the pharmaceutical and medical devices industries prioritize the use of domestic raw materials. MOI Regulation 16/2020, which went into force in June 2020, defines local content values as including manufacturing, raw ingredients, research and development, and packaging. It also sets out a process for the issuance of local content certificates and requires priority be given in the national health insurance system (JKN) to products with certified local content value when available. Companies are required to self-assess the local content of their products, further verified by independent assessors appointed by the MOI. Businesses are concerned that the regulation will prioritize drugs with higher local content even when imported versions have equivalent efficacy and safety at competitive prices.

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 and import permits on its behalf. This regulation also 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 National Agency of Drug and Food Control (BPOM) Regulation 16/2015, provide additional information about the application of these local manufacturing requirements.

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 also tightly controls and regulates imports of sugar, including through seasonal bans and annual quantity limits based on domestic production and consumption forecasts. Sugar refineries are permitted to import raw sugar based on fixed annual allocations intended to offset idle refining capacity. Some food and beverage companies are permitted to import limited volumes directly, but there remains an expectation to utilize refined domestic sugar.

Under Minister of Marine Affairs and Fisheries Regulation 41/2014, Indonesia prohibits the import of 152 live aquatic species, including Pacific oysters. Although the ban cites concerns regarding the sustainability of fish resources and the environment, Indonesia has yet to provide scientific justification for the ban.

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 that is valid for 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. 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 has cited "food security" and price management considerations as the principal objectives of the authorization in addition to its aspirations for food self-sufficiency. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, Indonesia has refused to issue import recommendations for japonica rice to private traders, although permitted under MOT regulations.

In 2016, BULOG was appointed as Indonesia's sole importer of feed corn, plantation white sugar, and buffalo meat (carabeef). Additionally, through MOT Regulations 57/2017 and 58/2018, the Indonesian Government sets farmer level and consumer level reference prices for corn, soybeans, sugar, shallots, beef,

chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other state-owned enterprises can intervene in the market when prices are above or below threshold targets.

Customs Barriers and Trade Facilitation

Indonesia notified its customs valuation legislation in 2001 to the WTO, but has not yet responded to the Checklist of Issues describing how the Customs Valuation Agreement is being implemented. 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 the primary basis of valuation 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 and its amendments require 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, as of March 2021, Indonesia had yet to notify the WTO of these measures pursuant to the WTO Agreement on Preshipment Inspection.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards and Testing Requirements

MOI Regulation 24/2013 (as amended by MOI Regulations 55/2013 and 29/2018) regulates toys and requires a mutual recognition agreement for the acceptance of test reports on toys 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, 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

Under Law 33/2014 on Halal Product Assurance, halal certification is 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 continues to develop regulations to implement Law 33/2014 and, in cooperation with the Ministry of Finance, is in the process of determining halal certification fees. U.S. stakeholders have voiced concerns that Indonesia has developed these regulations without sufficient notice and comment periods. MORA

Regulation 26/2019 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. MORA Decree 464/2020 provides a list of all products requiring halal certification.

Indonesia has previously expressed the need for a bilateral mutual recognition agreement for halal certification. This is currently not possible for the United States as there is no U.S. Government halal certification or accreditation body. Indonesia has since confirmed that U.S. halal certifiers can continue to be recognized without an agreement between the U.S. Government and BPJPH. In January 2020, MUI extended the recognition of previously recognized foreign certifiers, including all five U.S. certifying bodies, until January 2022. 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.

Sanitary and Phytosanitary Barriers

Meat and Rendered Products

Indonesia requires each U.S. meat and rendering 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 or rendered products to Indonesia. The process lacks transparency, and no new plants have been approved in recent years. The United States has raised concerns about this approval system with Indonesia, including at the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) and bilaterally and will continue to raise concerns.

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.

Under Government Regulation 35/2016, MOA requires all animal product establishments seeking to export to Indonesia to undergo inspections to obtain eligibility certificates. As part of this process, MOA charges fees for a "desk audit" of application materials, an on-site facility inspection (for products other than dairy), and a post-audit desk review. Indonesia also bills for transportation and lodging costs for MOA officials that conduct 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 requires that Indonesia recognize either the food safety system of the exporting country or a registered food safety testing laboratory serving that country's exporters. In 2020, Indonesia granted a three-year recognition of the U.S. food safety system, valid until January 2024.

SUBSIDIES

In 2019, for the first time in over twenty years, Indonesia filed a subsidy notification under the WTO Agreement on Subsidies and Countervailing Measures. Indonesia's notification only covered subsidy programs in the fisheries sector. According to the WTO Secretariat Report on the 2020 Trade Policy Review, Indonesia continues to provide 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, VAT, excise and luxury taxes, and local taxes, in addition to assistance on land acquisition, licensing, investment, and labor. Non-tax incentives in the form of loans and interest rate subsidies continue to be available mainly to micro-, small-, and medium-sized enterprises. 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 (as amended by Regulation 16/2018) and 38/2015 both require procuring entities to maximize local content in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. 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. In addition, the 2020 Job Creation Omnibus requires the central and local governments to allocate at least 40 percent of government procurement to local micro-, small-, and medium-sized enterprises in addition to cooperatives.

Indonesia's 2012 Defense Law and Presidential Regulation 76/2014 mandate priority for local materials and components and require defense agencies to use locally produced goods and services whenever available. In addition, when an Indonesian Government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for "trade balancing" offsets, including by incorporation of local content, production offsets, technology transfer, or a combination thereof.

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 remains on the Priority Watch List in the 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) are key concerns. The Mangga Dua Market in Jakarta continues to be listed in the Notorious Markets List, 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 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 protection against the unfair commercial use, in addition to 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 regarding geographical indications.

Indonesia addressed certain issues related to local manufacturing and use requirements through the 2020 amendments to the 2016 Patent Law. However, the 2016 Patent Law continues to raise concerns, including

with respect to the patentability criteria for incremental innovations, the grounds and procedures for issuing compulsory licenses, and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States and Indonesia 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 2019, the Minister of Education and Culture issued Regulation 34/2019, which if enforced, would implement these 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, 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 Indonesia rupiah (IDR) 1 trillion (approximately $73 million) prior to the merger. Separately, Indonesia's central bank, Bank Indonesia (BI), restricts 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) and requires data localization. OJK Regulation 77/2016 on peer-to-peer (P2P) lending 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 or subsidiary of a foreign entity. Under OJK Regulation 13/2018, financial technology companies must register with OJK and implement a regulatory sandbox to test new services and business models.

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. 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. As of March 2021, BI has not applied this requirement to 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.

Under BI Regulation 21/2019, Indonesia established national standards (termed QRIS, or Quick Response Code Indonesian Standard) for all payments using QR codes in Indonesia. U.S. companies, including payment providers and banks, noted concern that BI's QR code policymaking process excluded foreign companies which could stymy the development of cashless payment systems.

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. Under the 2020 Job Creation Omnibus, foreign hospitals are allowed to operate in special economic zones upon the fulfillment of central government requirements, which will be set forth in a future government regulation.

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. Under Government Regulation 14/2018 (GR 14), Indonesia limits 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 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 requires insurance companies operating in Indonesia to cede to domestic reinsurance companies 100 percent of the reinsurance for many common types of policies, such as life, accident, auto, and health insurance policies, and up to 50 percent of reinsurance for other lines, such as certain property and casualty policies. In June 2020, OJK issued Regulation 39/2020, which provides for the phased elimination of these domestic cessions requirements for purchase of reinsurance from companies domiciled in a country with whom Indonesia has a bilateral agreement.

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. The 2020 Job Creation Omnibus permits foreign ships to operate in Indonesia for special activities if there is no Indonesian vessel available, but excludes passenger and goods transport. Further implementing regulations are needed to specify the scope of activities permitted.

Construction, Architecture, and Engineering

Minister of Public Work and Housing Regulation 10/2014 permits a local construction firm to serve as a subcontractor or advisor to a foreign construction firm, subject to conditions, including: (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 IDR 20 billion ($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.

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. The 2020 Job Creation Omnibus

allows foreign educational institutions to operate in special economic zones, upon approval from the central government.

Franchising and Retail Distribution

In 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. However, Regulation 71/2019 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, 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 the regulation, private label products may account for a maximum of 15 percent of a modern retail establishment's inventory. MOT Regulation 56/2014 provides an exception to the domestic product requirement for standalone brands or specialty stores selling products that meet any one the following criteria: (1) products requiring uniformity of production and sourcing from a global supply chain; (2) products with "world famous" or premium branding that are not yet produced in Indonesia; or, (3) products from certain countries sold to meet the needs of their citizens living in Indonesia. MOT Regulation 56/2014 also provides an exception to the 15 percent maximum private label products cap for 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 difficult to import cellular and Wi-Fi equipped products. Under MOT Regulation 82/2012 (as 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. 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." Altogether, Indonesia's licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

To curb the illegal importation of cell phones, laptops, and tablets, MOI created an International Mobile Identity (IMEI) database that catalogs legally registered devices. Only devices that have an IMEI number registered in this database will be operational on Indonesian networks. MOT Regulations 78/2019 and 79/2019 require importers and domestic producers to register their devices' IMEI numbers with MOI and include IMEI numbers on the product's label. MCIT Regulation 1/2020 requires telecommunications operators to provide services only to devices that have registered IMEIs, and MOI Regulation 29/2019 established an IMEI database listing valid and registered IMEI numbers for telecommunications operators.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Signed in 2019, Government Regulation 71/2019 (GR 71) replaced Indonesia's long-standing data localization measure, Government Regulation 82/2012. Under GR 71, 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. GR 71, 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.

Under GR 71, financial service regulators are permitted to "further regulate" the treatment of financial sector data in a manner consistent with GR 71. In 2020, OJK issued Regulations 13/2020 and 38/2020, which appear to allow some but not all data to be transferred and stored outside of Indonesia for commercial banks and insurance companies. The United States continues to expect that all existing regulations affecting transfer and storage of financial services data will be amended to comply with GR 71, such that all financial services data can be transferred and stored outside of Indonesia.

GR 71 also requires public and private sector electronic system operators to register their electronic systems with MCIT, and 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. On December 2, 2020, MCIT issued an implementing regulation for GR 71, Regulation 5/2020, which requires private sector electronic system operators, including those providing services on a cross-border basis, to register with MCIT. Operators that do not register, or that fail to provide sufficient updates to their registration, can be subject to blocking by MCIT. Failure to comply with government takedown orders for a potentially broad category of "prohibited electronic information" can also result in blocking.

Digital Products

In 2018, the MOF issued Regulation 17/2018, which establishes five HS lines at the 8-digit level (with import duty rates currently set at zero percent) for software and other digital products transmitted electronically, including applications, software, video, and audio. Despite zero tariffs, 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 under this regulation 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.

Digital Services Tax

Under Law 2/2020, Indonesia introduced a series of changes to its tax code, including an expansion of the definition of permanent establishment for purposes of Indonesia's corporate income tax and a new electronic transaction tax (ETT) that targets cross-border transactions where tax treaties prohibit Indonesia from taxing corporate income from the transaction. MOF would need to issue additional legal measures for these new taxes to go into effect. 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 and non-digital companies. In June 2020, the United States initiated a Section 301 investigation into Indonesia's ETT over concerns that the tax, which will only apply to cross-border digital transactions, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce.

Internet Services

Indonesia has issued measures intended to regulate the electronic commerce sector. In 2019, Indonesia issued Government Regulation (GR 80/2019), which applies to a diverse range of domestic and foreign online merchants, electronic commerce companies, and intermediaries that facilitate electronic transactions between independent merchants and customers. Companies have expressed concern that GR 80/2019 overlaps with other regulations in the areas of data privacy, and requires companies to utilize an .id web address. In 2020, Indonesia issued MOT Regulation 50/2020 to implement GR 80/2019. MOT Regulation 50/2020 establishes requirements for e-commerce business activities, including requiring electronic commerce actors to obtain business licenses, promote local products, and provide regular reports to the Indonesia Statistics Agency. Foreign electronic commerce operators that have 1,000 transactions or 1,000 packages delivered to Indonesia per year are required to appoint a representative in Indonesia and/or to register for a foreign business license for electronic commerce. Both foreign and local electronic commerce actors have voiced concerns over the opaque drafting and stakeholder input process for these regulations.

INVESTMENT BARRIERS

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 restrictions based on company size, location, and sector. The 2020 Job Creation Omnibus provides a legal basis to establish a "positive list", whereby the government will identify priority sectors that the government is seeking to promote. It is unclear what relationship this "positive list" will have with the existing Negative Investment List and whether it will eliminate foreign equity limitations currently in place. Further details will be outlined in a future Presidential Regulation.

Energy and Mining

Over the past decade, the Indonesian Government has introduced regulatory changes to increase government control and local content 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 (as amended by Government Regulation 27/2017) 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. 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, in addition to 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 maintains stringent rules relating to how local content is measured with respect to oil and gas projects, and are intended to achieve an average of 91 percent local content by 2025. Under these rules, goods and services supplied by companies without majority Indonesian shareholding cannot qualify as local content, putting foreign energy service companies at a disadvantage compared to majority Indonesian-owned companies. In addition, Minister of Energy and Mineral Resources (MEMR) Regulation 31/2013 limits the amount of time expatriates may work in Indonesia's oil and gas sector to 4 years and prohibits expatriates from working past the age of 55.

Indonesia's 2009 Mining 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. This law also created a system for granting mining concessions based on licenses; as mining licenses are subject to future regulatory requirements, permitting, and tax changes, they provide significantly less certainty than the contract of work system. Additionally, foreign companies that obtain mining licenses must divest 51 percent of their holdings to Indonesian ownership over a 10-year period. In May 2020, the Indonesian Government passed Law 3/2020, amending the 2009 Mining Law. The new law returns licensing authority for mining activities to the central government (previously delegated to provincial authorities); however, it leaves most restrictions of the 2009 law in place.

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. 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 Indonesia's currency (the rupiah), Government Regulation 1/2019 mandates companies engaging in natural resources exports to place their foreign exchange proceeds in a designated account in a bank located in Indonesia and restricts the use of these proceeds to five categories: (1) payment of export duties 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 the 2007 Investment Law. This includes proceeds from exports of mining, plantation, forestry, and fisheries.

Medical Devices and Pharmaceuticals

The 2016 Negative Investment List caps foreign investment in the finished drugs industry at 85 percent and in the manufacture and distribution of medical devices at 33 percent and 49 percent, respectively. Medical devices sold by multinational companies in Indonesia face unclear or challenging market conditions. These include nontransparent processes by MOH when introducing new medical device regulations; lack of clarity whether pharmaceutical requirements (such as local manufacturing restrictions mentioned in the Pharmaceutical Market Access section) also apply to medical devices; and delays in the electronic catalog system used for public procurement to imported medical devices. In addition, Indonesia's public procurement agency, LKPP, implemented price controls on coronary stents in 2017, following India's lead in slashing prices. This move exclusively targets major multinational medical device companies with significant U.S. operations. The United States will continue to engage with Indonesia to clarify the

requirements for public procurement for medical devices in the electronic catalog system and to encourage the government not to extend its price control policy to other medical device categories.

OTHER BARRIERS

Although the Indonesian Government and the Corruption Eradication Commission (KPK) investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include poor coordination within the Indonesian Government, limited access to financing, the slow pace of land acquisition for infrastructure development projects, poor enforcement of contracts, an uncertain regulatory and legal framework, 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. Implementing regulations of this law ban the export of over 200 types of mineral ore, including nickel and bauxite. Under Government Regulation 1/2017, companies with existing contracts of work are required to convert to special mining business licenses, divest 51 percent of their shares to Indonesian parties over a period of 10 years, and build a domestic smelter by January 2022, in order to obtain a license to export mineral concentrates. U.S. stakeholders have expressed serious concern about these measures.

As part of implementation of the 2009 Mining Law, Indonesia prohibits the export of nickel ore, one of several recent measures restricting the export of key steelmaking raw materials. The United States has expressed concern about the impact this measure will have on global nickel supply and prices, in addition the impact on the production and exportation of stainless steel, which Indonesia is producing in rapidly increasing volumes well in excess of its domestic consumption. On December 11, 2019, the United States requested to join consultations initiated by the European Union 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.

Indonesia imposes a progressive export tax on exports of cocoa and palm oil, which 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.

Local Content

Indonesia imposes local content requirements across a broad range of sectors, including telecommunications, mobile technology, energy, agriculture, retail, and franchising. Indonesia appears to be expanding its use of local content requirements by increasing existing mandated local content levels and

by creating new local content requirements. The United States continues to press Indonesia to remove these local content and investment requirements, which may worsen Indonesia's investment environment and discourage potential U.S. investors. Indonesia stated in 2018 that it would undertake a "comprehensive review" of its local content requirements, but has not yet done so.

In the mobile technology sector, 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. MOI Regulation 29/2017 provides a formula for calculating "local content." MCIT Circular Letter 518/2017 clarifies that MCIT Regulation 27/2015 applies only to base stations, cell phones, tablets, laptops, and Wi-Fi modems.

In the telecommunications sector, 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. MCIT Regulation 4/2019 requires all TV and set-top boxes based on digital video broadcasting-terrestrial second generation and internet protocol set-top boxes to contain at least 20 percent local content. MCIT Regulations 9/2019 and 10/2019 require wavelength division multiplexing and internet protocol network devices to comply with local content requirements.

In the textile sector, Indonesia has maintained local content requirements since 2019, which have effectively banned imports of finished textile products classified in 430 Harmonized System (HS) Codes. U.S. carpet tile manufacturers report that the sudden implementation of the measures resulted in disrupted contracts with customers in Indonesia and has hindered their ability to bid on relevant new tenders.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $5.1 billion in 2020, a 0.3 percent decrease ($16 million) over 2019. U.S. goods exports to Israel were $10.2 billion, down 29.3 percent ($4.2 billion) from the previous year. Corresponding U.S. imports from Israel were $15.3 billion, down 21.7 percent. Israel was the United States' 26th largest goods export market in 2020.

U.S. exports of services to Israel were an estimated $5.8 billion in 2019 and U.S. imports were $7.4 billion. Sales of services in Israel by majority U.S.-owned affiliates were $5.0 billion in 2018 (latest data available), while sales of services in the United States by majority Israel-owned firms were $4.6 billion.

U.S. foreign direct investment in Israel (stock) was $28.5 billion in 2019, a 3.0 percent increase from 2018. 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

The United States–Israel Free Trade Agreement (FTA) entered into force on August 19, 1985. Israel implemented phased tariff reductions culminating in the complete elimination of duties on all non-agricultural products by January 1, 1995. While Israel has eliminated tariffs on non-agricultural goods as agreed, tariff and non-tariff 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 13 times, most recently through December 31, 2021, 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.

The United States and Israel meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Israel Joint Committee is the central oversight body for the FTA, and met on December 2, 2020.

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 $38 million to $63 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 $25 million per year in export sales of these products. Stakeholders estimate that full market access 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.

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.

The Standards Institute of Israel (SII) refuses to accept test results from U.S. toy manufacturers' accredited in-house labs. SII charges these manufacturers EUR 700 (approximately $850) in testing fees per stock keeping unit for testing their products. By contrast, SII charges EUR 50 (approximately $61) in test-review fees when the manufacturer uses an SII-recognized laboratory. Many U.S. toy manufacturers' in-house labs are accredited by the International Laboratory Accreditation Cooperation (ILAC) and are also accredited according to the U.S. Consumer Product Safety Improvement Act, which establishes the conditions of a "firewall" lab (*i.e.*, a lab that is owned, managed, or controlled by the manufacturer) to ensure there is no conflict of interest.

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. 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).

INTELLECTUAL PROPERTY PROTECTION

The United States remains concerned with certain deficiencies involving Israel's protection of intellectual property (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. U.S. Industry reports Israel is home to online advertisement networks that are used by pirate websites to generate revenue. RevenueHits, which is listed in the 2020 Review of Notorious Markets for Counterfeiting and Piracy, is one such network. Concerns also remain about Israel adequately protecting 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.

BARRIERS TO DIGITAL TRADE

Data Localization

Data protection in Israel is governed primarily by the Protection of Privacy Law (5741-1981) and the guidelines of the Israeli regulator, the Privacy Protection Authority. Similar to the European Union General Data Protection Regulation, Israeli law restricts the cross-border transfer of personal data of Israelis unless certain specific criteria are met, such as the use of standard contract clauses. The United States remains committed to working with Israel to ensure continuity in cross-border data flows and privacy protection.

INVESTMENT BARRIERS

Israel established a centralized investment-screening (approval) mechanism for certain inbound foreign investments in October 2019. Investments in regulated industries (*e.g.*, banking and insurance) require approval by the relevant regulator. Investments in certain sectors may require a government license.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $55.4 billion in 2020, a 19.9 percent decrease ($13.8 billion) over 2019. U.S. goods exports to Japan were $64.1 billion, down 13.8 percent ($10.3 billion) from the previous year. Corresponding U.S. imports from Japan were $119.5 billion, down 16.8 percent. Japan was the United States' 4th largest goods export market in 2020.

U.S. exports of services to Japan were an estimated $50.1 billion in 2019 and U.S. imports were $35.8 billion. Sales of services in Japan by majority U.S.-owned affiliates were $77.4 billion in 2018 (latest data available), while sales of services in the United States by majority Japan-owned firms were $173.2 billion.

U.S. foreign direct investment in Japan (stock) was $131.8 billion in 2019, a 16.4 percent increase from 2018. U.S. direct investment in Japan is led by finance and insurance, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement (USJDTA) entered into force in January 2020. Under the USJTA, over 90 percent of U.S. agricultural exports to Japan are duty free or receive preferential tariff access. The USJDTA 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. The United States and Japan meet regularly to review the implementation and functioning of the two agreements, and to address outstanding issues.

IMPORT POLICIES

Tariffs

Japan's average Most-Favored-Nation (MFN) applied tariff rate was 4.3 percent in 2019 (latest data available). Japan's average MFN applied tariff rate was 15.5 percent for agricultural products and 2.5 percent for non-agricultural products in 2019 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an 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.

Fish and Seafood

Total U.S. fish and seafood exports to Japan in 2020 were valued at $565 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, remaining import quotas and tariffs 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 130 percent on certain footwear imported from the United States. 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 (approximately $39) per pair, whichever is higher. These tariffs can more than 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.

Non-Tariff Barriers

Rice Import System

Japan's highly regulated and nontransparent system of importation and distribution 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 2020 were valued at $261 million, totaling 314,295 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 were it 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 food 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 as a variable levy. 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 ¥125 per kg (approximately $1.15 per kg) based on the difference between the actual import value and a government-established reference price. This duty is in addition to an *ad valorem* duty that is charged on all chilled and frozen pork regardless of import value. With the implementation of the USJTA, the variable levy under the pork gate price mechanism will be reduced over time for U.S. pork, but not eliminated.

Customs Barriers and Trade Facilitation

The United States has encouraged Japan to raise the *de minimis* threshold below which it will not assess duties, from a current level of ¥10,000 (approximately $90) to a level closer to the $800 U.S. *de minimis* threshold. This would reduce documentation requirements and help U.S. shipments move more quickly across the Japanese 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) 2017 amendment to Japan's Food Labeling Standards expands country of origin labeling requirements to the main ingredients by weight in processed foods manufactured in Japan, with a transition period for compliance 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 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. 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 are present at very low levels, in the final food product.

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. 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 list of fungicides used because these post-harvest fungicides are classified as food additives, whereas pre-harvest fungicides are not. This may disadvantage U.S. products by giving consumers the impression that competing Japanese products have not been treated with fungicides.

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 developed and agreed on a phytosanitary framework that addresses many market access requests for the agriculture industry in each country. In September 2020, the United States and Japan agreed to updates to this framework.

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 on phytosanitary topics relating to U.S. potatoes.

Apples

Japan transferred oversight of the program for U.S. apple exports to Japan to USDA in December 2019. 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 costly fumigation treatment requirements.

Stone Fruit

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, which includes both nectarines and European plums. Once agreement is reached on the work plan, Japan will complete regulation revisions, therefore allowing Japanese plums produced in California access to the Japanese market.

SUBSIDIES

Wood Products and Building Materials

Japan maintains numerous support 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 2019 MAFF supplemental budget, making approximately $340 million available to support up to 50 percent of the expense of building projects to enhance domestic forestry production and logistics systems. The program also subsidizes Japan Agricultural Standard structural lumber, which appears to provide *de facto* support for domestic production. Japan has allocated approximately $1.1 billion each year under the Forest Management Project to support thinning and selective logging operations. In 2024, Japan will begin to collect the Forest Environment Tax Transfer from each Japanese household and will distribute the funds and Forest Environment Tax Transfer to local governments. The United States is monitoring the disbursement of these funds and other support programs.

GOVERNMENT PROCUREMENT

Japan is a Party to the WTO Agreement on Government Procurement (GPA).

Japan is obligated to open its government procurement covered under the GPA to goods, services, and suppliers from the United States and other GPA Parties. Japan has also made commitments to the United States under bilateral agreements. U.S. industry in several sectors have flagged that Japanese Government entities sometimes use technical specifications to exclude U.S. products and services. The United States has expressed these concerns to Japan as they have arisen and will continue to engage with Japanese officials 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.

Industry has reported that counterfeit products are increasingly accessible online and are transported via postal and courier services. In 2019, Japan customs officials seized 21,091 cases of counterfeit items transported via the postal system, compared with 2,843 cases of sea and air cargo shipments. While Japan generally bans 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. The United States has urged Japan to revise the Trademark Act to limit the quantity of items and number of times that an individual can apply a personal use exemption and to disallow the exemption for items received by mail.

Industry has also raised concerns about Japan's mechanism for early resolution of potential pharmaceutical patent disputes. An effective mechanism for the early resolution of such disputes promotes transparency and predictability for stakeholders and the public.

The United States has urged Japan to adopt measures to protect against piracy in the digital environment. In June 2020, amendments to the Copyright Act expanded the scope of illegal downloads covered by the Act, which was previously limited to copyrighted music and videos, to include all copyrighted material, including manga (comics), books, news articles, and illustrations. The revised Act also regulates "leech websites" (link sites) that use hyperlinks to download torrent files of pirated materials. The ban on illegal downloading took effect on January 1, 2021.

In order to be protected as geographical indication (GI) products in Japan under the Act for Protection of Designated Agricultural, Forestry and Fishery Products and Foodstuff (GI Act), domestic as well as foreign GIs are subject to an application process via MAFF for food and via the National Tax Agency (NTA) for alcoholic beverages. As of February 2021, 104 GIs for agricultural, forestry, and fishery products were recognized by MAFF, and 14 GIs for domestic alcoholic beverages were 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 identified GIs, including 71 agricultural and fishery products and 139 wines, spirits, and other alcoholic beverages. On February 1, 2021, Japan agreed to protect an additional 28 GIs from the European Union. The NTA had already protected seven other identified GIs for alcoholic beverages from Chile, Mexico, and Peru, in light of Japan's EPAs with those countries. The EPA-related agreements on GI designations, essentially a mutual recognition of specified GIs, comprise a separate process from the MAFF/NTA application process. In total, through the MAFF/NTA process and the process under Japan's EPA agreements, Japan protects 363 GIs.

The United States continues to monitor implementation of Japan's GI system, as well as implementation of its recent agreements with the EU and other trading partners 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 Company (Japan Post Co.), 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 March 2020, approximately 63 percent of JP Holdings' shares were owned by the Japanese Ministry of Finance (MOF). JP Holdings owns approximately 89 percent of JP Bank and 65 percent of JP Insurance.

Express Delivery

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on Express Mail Service (EMS) shipment rules. Further, companies report that Japan customs officials may not consistently apply Japan's *de minimis* standards to Japan Post Co. EMS shipments, thereby allowing some EMS packages to avoid inspections and duty tax calculations that would otherwise be due.

Japan Post Co. is regulated by a single agency, the Ministry of Internal Affairs and Communications (MIC), whereas private express delivery companies are subject to rules imposed by various ministries including MOF, MHLW, MAFF, and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). This complicates compliance.

The United States continues to urge Japan to level the playing field by equalizing customs procedures and requirements as well as prohibiting the subsidization of Japan Post Co.'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 Co. 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 $459.3 billion in 2019 (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 harm to 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 (approximately $95,000) to ¥13 million (approximately $123,300) and to raise the per-policyholder insurance coverage cap of JP Insurance from ¥13 million to ¥20 million (approximately $190,000). In April 2019, Japan raised the per-customer deposit cap to ¥26 million (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 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. As a result, FSA and MIC ordered a three-month mandatory suspension of JP Insurance product sales across the Japan Post network, as well as other penalties. While the sales ban from regulators lasted only until March 2020, the company voluntarily suspended insurance sales for more than a year while conducting an internal investigation. On October 5, 2020, the company announced it will begin selling insurance products again, but signaled that a proactive sales push will not begin until the end the current fiscal year (March 2021) as the company focuses on apologizing to customers and disciplining more than 2,500 involved staff.

The revised 2012 Postal Privatization Law stipulates that the stock sale of JP Holdings, JP Bank, and JP Insurance should be conducted "as soon as possible," but there is no specific deadline. A separate "Law to Secure Funds for Reconstruction," passed in 2011, earmarks proceeds from the JP Holdings' stock sale conducted through the end of Japan's FY2022 (March 31, 2023) for Tohoku earthquake reconstruction. Given the delay in the JP Group's subsequent stock sale, the Diet passed a revision to the latter law in June 2020, extending the deadline for directing proceeds toward reconstruction until the end of FY2027 (March 31, 2028). Once 50 percent or more of JP Insurance stock is sold by JP Holdings, JP Insurance will be able to engage in new businesses on a "notification basis" instead of the current "application and approval basis" pursuant to the Postal Privatization Law, while "giving special consideration not to hamper fair competition with other insurance companies."

Insurance Cooperatives

Insurance cooperatives, known in Japan 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 Japanese Government fully liberalized the range of insurance products eligible for sale through banks. However, limits remain on the sales of some products, different rules exist for the treatment of customer data in some cases, and sales restrictions on insurance are applied to certain categories of customers (for example, customers who work for small- or medium-sized corporate borrowers). The United States continues to call on the Japanese Government to conduct in the near term a fact-based and transparent review of the bank sales channel that includes meaningful opportunities for input from interested stakeholders and considers 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). After many years of advocacy by the United States, an amendment to the "Act of Special Measures concerning the Handling of Legal Services by Foreign Lawyers," or "*Gaiben* Law," passed the Diet in May 2020, expanding the scope of representation by foreign lawyers in international arbitration and easing the relevant experience requirements for establishing a joint corporation. Specifically, the amendment: (1) reduces the requirement for post-admission practice of home country law from two years to one year; (2) permits foreign lawyers to establish branch offices jointly with Japanese lawyers; and (3) broadens the scope of representation for international arbitration and mediation to allow foreign attorneys to participate in matters involving foreign clients, laws, and jurisdictions. The United States welcomes these changes and continues to urge Japan to further liberalize the legal services market.

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 that 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

The Nippon Telegraph and Telephone Corporation (NTT), established as a state monopoly in 1952, privatized in 1985, and broken into several subsidiaries in 1999 to encourage competition, nonetheless continues to be the dominant player in Japan's telecommunications market. NTT East and NTT West, providing fiber-to-the-home and other services, hold a 54 percent share of fixed-line broadband subscribers. NTT DoCoMo is Japan's largest mobile carrier with 79 million subscribers and a 44 percent market share.

In December 2019, MIC eased rules to allow joint procurement among subsidiaries of the NTT group. The change was viewed as part of a Japanese Government strategy to boost the global competitiveness of Japan's telecommunications leader but prompted concern among domestic competitive stakeholders. In

September 2020, NTT announced it would spend ¥4.3 trillion (approximately $40 billion) to buy NTT DoCoMo's publicly listed shares—not owned by NTT—to enhance the competitiveness of the NTT group as it consolidates its services.

Spectrum Allocation

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation is at the discretion of MIC, based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. Spectrum allocation charts are available on MIC's Radio Use website. 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 that prevent U.S. company technologies from functioning in Japan. For example, U.S. automakers have long expressed concern about Japan's spectrum allocation for vehicle communication devices, which does not align with prevailing practice globally. Foreign automakers must alter these vehicle devices to sell cars in Japan, which is a significant non-tariff barrier.

Handset Pricing

In 2019, the Diet passed an amendment to the Telecommunications Business Act (TBA) that: (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.

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 United States 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.

Imported Equipment for Testing and Demonstration Purposes

In 2019, the Diet passed a bill amending the Radio Act to simplify procedures for importing radio equipment for experimental purposes that has not been technically certified in Japan. Equipment within the scope of the amendment must meet certain globally accepted technical standards, such as those of the U.S. Federal Communications Commission (FCC) or the EU's CE certification, and MIC must be notified prior to importation. This amendment is an improvement over the previously required licensing system, which required examination of the equipment by Japanese authorities. Upon fulfillment of the amended requirements, the foreign manufactured product can be used for experimental purposes in Japan for up to 180 days without a technical standards compliance mark. Ordinances to implement these new procedures took effect in November 2019.

Renewable Energy Services

U.S. companies attempting to sell renewable energy in Japan have reported being denied grid access because the grid is "full." Despite revisions to the Electricity Business Act implemented in April 2020 that required the legal unbundling of the transmission and distribution business from the power generation and retail business, legacy utility companies still own and operate most of the transmission and distribution grids in Japan through wholly owned subsidiaries. These utility companies reportedly overstate actual grid usage and understate available capacity to prevent competition from new entrants. In addition, Japan's technical and safety standards do not always 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. In September 2020, METI proposed new changes to the feed-in tariff (FIT) mechanism that obliges electricity retailers to purchase electricity generated from biomass, geothermal, and wind renewable energy sources at fixed prices for certain periods determined by the Japanese Government. The changes will lower prices accepted under the FIT scheme unless companies meet certain conditions, including a deadline for previously approved FIT projects to become operational. In response to public comments and U.S. Government engagement, METI announced in November 2020 its intention to extend deadlines for projects that have experienced environmental review delays. In addition, METI is currently discussing the details of a new "feed-in premium" (FIP) scheme that will be phased in starting in early 2022 as an eventual replacement for the existing FIT mechanism. Under the new FIP mechanism, certain renewable generators are eligible to sell power into the spot market at a premium to the wholesale price, rather than receive a fixed price per kilowatt-hour under the current FIT system. The United States will continue to monitor these developments.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Privacy Regulation

The Act on the Protection of Personal Information (APPI), enacted in 2003, is Japan's principal data protection legislation. Following several revisions, the 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. Japan acceded to the APEC Cross Border Privacy Rules (CBPR) system in 2014. In 2019, Japan and the EU 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 restricting the transfer of EU data from Japan to a third country, including to the United States. The APPI was amended to better align with the EU's General Data Protection Regulation and was further strengthened by amendments that the Diet passed in June 2020.

The Personal Information Protection Commission (PPC) was established in 2016 as Japan's centralized data protection authority with enforcement powers backed by penal sanctions. Despite this authority, U.S. industry has expressed concern that other Japanese Government agencies have created parallel data privacy and protection rules that encroach on PPC's jurisdiction, complicating compliance.

Digital Platform Regulation

In September 2019, a new advisory board, the Digital Market Competition Headquarters (DMCH), was created 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 would be targeted and

subjected to cumbersome regulations not applicable to smaller information technology 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 May 2020, the Diet passed a new law developed by the DMCH on "Improving Transparency and Fairness of Specified Digital Platforms," which obliges certain platform operators to improve transparency in their business practices. The law raises concern because 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 Japanese Government wide discretion to pick and choose which specific companies will be affected. The Japanese Government initially targeted major online shopping mall operators and app stores in the regulations that went into effect in February 2021. Persistent official references to "GAFA companies" (Google, Apple, Facebook, and Amazon) in the announcement of this new law, while excluding references to Japanese or other foreign companies with similar business practices and market share in Japan, suggest a disproportionate focus on U.S. companies.

The law also raises concern because it contains a requirement that companies explain how their search rankings are determined, which if not carefully implemented and enforced could have the unintended consequence of facilitating the artificial manipulation of rankings to the detriment of consumers.

On June 17, 2020, the DMCH issued an Interim Report on the Digital Advertisement Market for public comment, signaling that these platform operations may be brought into the scope of the law. U.S. stakeholders have expressed concern that several conclusions put forward in the DMCH's interim report are not warranted and say that decision-making is opaque because U.S. stakeholders are excluded from important DMCH discussions and meeting minutes are not published. The DMCH will publish a final report in March 2021. Meanwhile, the JFTC issued its own report on the digital advertising market on February 17, 2021, citing Google's "monopolistic and oligopolistic" position and warning that certain behaviors of digital platform operators may constitute an abuse of superior bargaining position prohibited under anti-monopoly law. The United States has been extensively engaging with Japan regarding these and other concerns and will continue to monitor implementation of the legislation.

In a related action, in 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), 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 (ASBP) 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, JFTC provided several examples in the final guidelines of practices that would or would not constitute ASBP. 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. stakeholders have also noted concerns with amendments to Japan's Telecommunications Business Act (TBA), which the Diet passed in June 2020. The amendments extend Japanese regulation designed for domestic telecommunications business operators (*e.g.*, confidentiality rules, registration requirements, and

service disruption notifications) to foreign operators, including those providing "over-the-top" (OTT) services, even if a service is supplied on a cross-border basis. Such requirements could be particularly burdensome for foreign SMEs. Of particular concern is compliance with the TBA's "secrecy of communications" (SoC) provision, which, when extended to digital OTT services, requires user consent to access or transmit communication content and metadata in any electronic commerce, streaming, search, e-mail, messenger, cloud, or payment service deemed by MIC to intermediate two-party communications. Given the vast range of OTT services, some of which are free or do not require user registration, U.S. industry says that SoC compliance will be challenging without recognition of blanket consent and exceptions for machine-to-machine and human-to-machine communications, and could potentially limit the ability to offer certain services in Japan. MIC, in the process of drafting implementing ordinances, has signaled that blanket consent and the exceptions for automated communication are unlikely. Additionally, mandatory reporting of service outages may be overly burdensome if they are triggered by unreasonably low levels of service disruption, a particular concern, as the regulator has stated that Japanese consumers have a lower tolerance for service problems than U.S. consumers.

The United States will continue to monitor these developments and encourage transparency, appropriately tailored regulation, and multi-stakeholder engagement in the process.

INVESTMENT BARRIERS

Japan continues to have the lowest inward foreign direct investment (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 2019 (latest data available) was the equivalent of only 4.3 percent of Japan's GDP. 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 to ¥35 trillion ($318 billion) by 2020, and it confirmed this commitment in its 2018 growth strategy. At the end of 2019, Japan's inward FDI stock was ¥33.9 trillion ($310.3 billion), an increase of 10.4 percent over the previous year.

The Japanese Government pursued a range of policies intended to promote its 2020 target. However, the number of annual inbound M&A deals has remained relatively low for an economy the size of Japan's, raising questions about the effectiveness of these policies in promoting FDI. 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, and a relative lack of financial transparency and disclosure. (*For further information, see the Other Barriers section below.*)

In 2020, amendments to the Foreign Exchange and Foreign Trade Act took effect. The amendments lower the ownership threshold from ten percent to one percent for prescreening of foreign investments in sectors related to national security (*e.g.*, weapons, railways, cybersecurity, telecommunications, and nuclear power). Under the amendments, however, exemptions to prescreening may be available under certain circumstances, depending on the type of investor, amount of equity investment, or the nature of the firm targeted for the foreign investment. During 2020, Japan also completed steps temporarily to add certain medical devices and pharmaceutical products to the list of sectors subject to prescreening for national security.

ANTICOMPETITIVE PRACTICES

Improving Anti-Monopoly Act Compliance and Deterrence

Japan's Anti-Monopoly Act (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 to ensure open and competitive markets.

On June 19, 2019, the Diet approved revisions to the AMA that provide greater discretion to the JFTC to offer leniency to companies that agree to cooperate in AMA investigations. On April 2, 2020, the JFTC published draft rules regarding its new leniency program, a draft operational policy for a penalty reduction system based on the extent of a company's contribution to an investigation (value of evidence), and draft guidelines for the introduction of limited attorney-client privilege. The AMA amendments were adopted on June 26, 2020, and entered into force on December 25, 2020.

Abuse of Superior Bargaining Position

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. 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 in 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. *(For further information, see the Digital Platform Regulation section above.)*

Recognition of Limited Attorney-Client Privilege

In 2020, the JFTC introduced protections for certain attorney-client communications, a departure from Japan's general absence of such protections. However, the scope of protected confidential attorney-client communications is extremely limited, protecting only legal advice under the AMA regarding alleged price cartels and bid rigging. In principle, only an external lawyer's advice is protected. An in-house lawyer's advice might be protected only if the in-house lawyer is working independently from the enterprise itself. In addition, only legal advice by lawyers qualified in Japan is protected. Legal advice from foreign lawyers (even if they are registered in Japan as a Registered Foreign Lawyer (*gaikokuho jimu bengoshi*)) is not protected, as a result of Japanese limitations on the practice of law in Japan. The rules further protect communications only if the documents are carefully segregated from other documents. 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. 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 Japanese 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 to be 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

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 continues to urge Japan to further improve its commercial law and corporate governance systems to promote efficient business practices, capital markets development, and shareholder rights in accordance with international standards. Areas ripe for improvement include facilitating and encouraging active and appropriate proxy voting and strengthening protection of minority shareholders by clarifying fiduciary duties of directors and controlling shareholders.

Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low.

Non-tariff barriers include certain issues relating to 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

Japan is a major market for U.S. pharmaceuticals and medical devices. According to MHLW figures, imported U.S. medical devices held a 25 percent market share in Japan in 2019 and were valued at $9.6 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. Additional ministry figures show that imports of U.S. pharmaceuticals were valued at $5.1 billion and comprised five percent of the overall Japanese market in 2019 (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 Japanese Government 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 from 2018 onward have eroded this progress.

In the 2018 pricing cycle, Japan made several changes to its Price Maintenance Premium (PMP) rule, which was originally put into place in 2011 to reward innovation and allow for pricing stability throughout the patent life of a medicine. Under the 2018 revised rule, the number of products that can qualify for the PMP was reduced, and fewer innovative companies 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 SMEs, are at a disadvantage compared to Japanese companies.

In addition to failing to address concerns regarding the PMP criteria, in 2020, in the absence of prior public notification and opportunity for comment, MHLW hastily expanded drug repricing for additional indications and, in particular, to cover drug indications where there are not pharmacologically similar drugs available in the Japanese market. U.S. industry is concerned about the abrupt and non-transparent nature of this rule change and its impact on the pricing of innovative drugs.

The so-called "off-year" price revisions for reimbursement of drugs under Japan's National Health Insurance system, which are scheduled to begin in April 2021, is an additional area of concern. The off-year price revisions were included in the basic policy for drug pricing reforms adopted by the Japanese Government in 2016. The policy called for drug price surveys to be carried out every year on all products and for reimbursement price revisions to be implemented based on their results, covering only products with significant price discrepancies (gaps between reimbursement prices and market prices). However, in December 2020, Japan announced that it would deviate from this policy by applying annual reviews and decisions on reimbursement pricing for pharmaceutical products in which price discrepancies are lower than anticipated, including below-average price discrepancies.

Finally, U.S. stakeholders are concerned that Japan's implementation of the Health Technology Assessment (HTA) will create significant uncertainty about prices for advanced medical devices and innovative pharmaceuticals. In particular, U.S. stakeholders are concerned that the application of HTA prior to launch could significantly delay patient access to those products.

U.S. stakeholders have expressed strong concerns about a lack of transparency and stakeholder consultation in the development of 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.

The medical device sector has concerns about Japanese regulators' practice of grouping together innovative and less-advanced medical devices in the same "functional categories," which are a key determinant of reimbursement prices for these products. Industry is concerned that the variation in product functionality within these categories has become more pronounced in recent years, which disadvantages more innovative devices that often come from U.S. companies. U.S. industry is concerned that these and other reimbursement practices in Japan may negatively impact incentives for medical device innovation. Additionally, the U.S. medical device industry has long requested greater transparency in MLHW's pricing and reimbursement decision-making processes, as well as more opportunities for consultation and engagement.

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 "dietary supplements" are regulated by the FDA under different regulations than "conventional" foods. Japan has taken steps to streamline import procedures and to improve access in this market. However, many significant market access barriers remained as of 2020, including a 12.5 percent tariff on vitamin imports.

The 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 either 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. Although there have been some improvements in processing time, the adoption of a monograph system, intended to expedite the registration of products as quasi-drugs under Japan's Pharmaceutical and Medical Devices Act, continues to be delayed. As a result, products that contain active ingredients that are approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may require six months 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 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 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, including the development of an online system for registration.

Aerospace

In the defense sector, the Japanese Government 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 to 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. However, one important impediment to further bilateral engagement in this sector is concern about Japan's ability to protect advanced defense technologies. The Japanese Government is making efforts to address some of the issues with respect to advanced defense technologies, but it will likely take time to see real progress. 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 purchasing of U.S. military systems is expected to continue to grow.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was $545 million in 2020, a 19.6 percent decrease ($133 million) over 2019. U.S. goods exports to Jordan were $1.3 billion, down 11.2 percent ($167 million) from the previous year. Corresponding U.S. imports from Jordan were $1.9 billion, down 13.8 percent. Jordan was the United States' 68th largest goods export market in 2020.

U.S. exports of services to Jordan were an estimated $757 million in 2019 and U.S. imports were $654 million. Sales of services in Jordan by majority U.S.-owned affiliates were $59 million in 2018 (latest data available), while sales of services in the United States by majority Jordan-owned firms were $2 million.

U.S. foreign direct investment in Jordan (stock) was $179 million in 2019, a 0.6 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement (FTA) entered into force on December 17, 2001. Under the FTA, as of January 1, 2010, Jordan provides duty-free access to nearly all U.S. exports, with exceptions for a few product lines, such as alcoholic beverages and pornographic materials. The United States and Jordan meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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. In July 2018, Jordan doubled to 20 percent a 10 percent tax on carbonated drinks that was imposed just 17 months prior, and then dropped the tax to 15 percent after U.S. Government advocacy efforts. The United States continues to work with Jordan to promote transparency by encouraging consultations with the private sector.

Non-Tariff 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 approval 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.

Customs Barriers and Trade Facilitation

Jordan ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) on February 22, 2017, and issued 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.

Jordan abolished the requirement to consularize or legalize commercial invoices, certificates of origin, manifests, shipper's export declarations, or any other customs documentation in connection with the importation of goods.

In line with the TFA, Jordan introduced an authorized economic operators program, the National Golden List Program, for the import sector. Under this program, authorized importers will be granted special treatment at ports-of-entry in addition to other facilities and afforded other privileges covered by the program.

TECHNICAL BARRIERS TO TRADE

Jordan recognizes and accepts international standards and specifications utilized by U.S producers. However, Jordan's signing of a twinning program[1] 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 and distribution of food products labeled as containing genetically engineered (GE) ingredients. JFDA followed this announcement with draft regulations on imported GE 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." In April 2020, Jordan issued a new regulation, "Instructions for Handling Food and Food Products Originating from Genetically Modified Substances Produced by Modern Biotechnology for 2018," based on Article 8.B of Food Law No. 30/2015 and Article 7.K of Law of Food and Drug General Administration No. 41/2008 that addressed U.S. concerns. Under this regulation, Jordan: (1) accepts the importation of products labeled as containing GE ingredients as long as the product is produced and consumed in the country of origin; (2) accepts the importation of such products based on the country of origin's risk assessment system; (3) establishes the labeling threshold for GE ingredient declaration at five percent; and, (4) bans restrictions on the import of GE foods and food products. Monitoring and continued engagement with Jordan will be necessary to ensure that the implementation of this regulation does not pose market access challenges for products that may be labeled as containing GE ingredients.

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. 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.

[1] Twinning is an EU technical assistance device that provides support for the implementation and enforcement of EU standards.

In 2018, Jordan replaced its public bread subsidy program with a targeted assistance program that sets new bread prices. Through this program, Jordanian officials manage domestic and imported wheat purchases.

GOVERNMENT PROCUREMENT

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since March 2000. In 2002, Jordan commenced the process of acceding to the GPA, with the submission of its initial offer. Jordan subsequently submitted 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 have been inactive for some time.

In February 2019, the Jordanian 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.

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 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 $198 million in 2020, a 25.4 percent decrease ($68 million) over 2019. U.S. goods exports to Kenya were $371 million, down 7.6 percent ($31 million) from the previous year. Corresponding U.S. imports from Kenya were $569 million, down 14.7 percent. Kenya was the United States' 96th largest goods export market in 2020.

U.S. foreign direct investment in Kenya (stock) was $353 million in 2019, a 3.8 percent decrease from 2018.

TRADE AGREEMENTS

The United States and Kenya entered into trade agreement negotiations on July 8, 2020.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Kenya's average Most-Favored-Nation (MFN) applied tariff rate was 13.4 percent in 2019 (latest data available). Kenya's average MFN applied tariff rate was 20.3 percent for agricultural products and 13.4 percent for non-agricultural products in 2019 (latest data available). Kenya has bound 16.4 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 94.5 percent.

Kenya generally applies the Eastern African Community (EAC) Customs Union's Common External Tariff (CET), which includes three tariff bands: (1) zero percent duty for raw materials and inputs; (2) 10 percent duty for processed or manufactured inputs; and, (3) 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 among the five EAC member states. In July 2020, the EAC granted Kenya a one-year stay to the rice CET, reducing the tariff to 35 percent or $200 per metric ton (whichever is higher) due to Kenya's status as a net importer.

Kenya sometimes waives tariffs when domestic agricultural prices exceed certain levels and there is a need to stabilize prices.

Under the EAC's Exemptions Regime, the EAC had exempted all solar and wind energy products from import duties. In June 2016, the EAC amended the Regime to narrow 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 have had a negative impact on the business operations of solar home system companies, even though 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.

Kenya's 2018 Finance Bill had exempted the supply or import of certain specialized equipment for the development and generation of solar and wind energy from the value-added tax (VAT). This included deep

cycle batteries, which use or store solar power. The subsequent 2019 Finance Bill, adopted in November 2019, amended this exemption by requiring the Kenyan Cabinet Secretary for Energy to issue a recommendation before a VAT exemption is granted. Kenya's 2020 Finance Bill, adopted in June 2020, removed that discretion and eliminated the exemption, which has negatively affected U.S. operators of solar home systems in Kenya.

Taxes

The 2019 Finance Bill amended 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 2020 Finance Bill, established a tax of 1.5 percent of the gross transaction value of income accrued through a digital market place, and is payable when transferring payment to the service provider, effective January 1, 2021. In August 2020, the Kenya Revenue Authority (KRA) published the Income Tax (Digital Service Tax) Regulations to provide guidance on the implementation of this digital services tax.

The VAT Act, adopted in 2013, reduced the number of VAT-exempt items from 400 to 27, 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. Amendments to Kenya's VAT Act clarified some items that are VAT exempt, including: aircraft engines, aircraft parts, plastic bag biogas digesters, parts for the assembly of primary school laptop tablets, and goods for use by the Kenya Film Commission or in the construction of industrial and recreational parks subject to specified conditions. These amendments also made clear that VAT refund claims must be submitted within 12 months of purchase. VAT Regulations issued in 2017 further clarified the implementation of 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 2019 and 2020 fiscal years remains unclear. VAT-exempt companies, including importers, still experience lengthy wait times in receiving their VAT refunds.

In 2018, the KRA imposed the 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 2018, the KRA also imposed an eight percent VAT on fuel products including petrol, diesel, jet fuel, and kerosene. In 2019, the KRA exempted additional goods from the VAT, including machinery and equipment used for the construction of plastic recycling plants. In 2020, the KRA reversed this VAT exemption. Also in 2020, the KRA rescinded VAT exemptions on helicopters and certain aircraft parts, as well as the hiring, leasing, and chartering of helicopters. At least one U.S. company in Kenya that sells small planes, helicopters, and parts has been negatively impacted by the removal of this exemption.

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. The 2020 Finance Bill increased the import declaration fee on goods imported under the EAC's Duty Remission Scheme from KES 10,000 (approximately $92.60) per shipment to 1.5 percent of the customs value.

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.

Non-Tariff 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 appear limited to products for which environment, health, or safety concerns exist.

Import Bans

In April 2020, the Kenya Bureau of Standards (KEBS) imposed an indefinite ban on the importation of used clothing and footwear, citing risks related to the COVID-19 pandemic. In August 2020, KEBS lifted the ban.

Customs Barriers and Trade Facilitation

Kenya ratified the WTO Trade Facilitation Agreement in December 2015. Kenya is overdue in submitting two transparency notifications related to (i) import, export, and transit regulations (Article 1.4); (ii) the use of customs brokers (Article 10.6.2); and (iii) arrangements on the provision of technical assistance support (Article 22.3). These notifications were due to the WTO on February 22, 2017, according to Kenya's self-designated implementation schedule.

U.S. companies have raised concerns about the length of time it takes for Kenyan Customs to release shipments, as well as the use of excessive formalities. Many U.S. companies state that Kenya's single window does not operate as intended, and that pre-arrival processing of electronic documents is ineffective. Other U.S. companies have raised concerns about the inconsistent application of classification and valuation decisions, as well as unnecessary transit inspections. U.S. industry has also expressed frustration with inadequate *de minimis* relief from customs duties and taxes for express shipments. Kenya's customs law appears to reward customs officers for aiding in the seizure of goods up to the value of the imports that have been seized.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Kenya requires pre-shipment inspection of most imports under its Pre-Export Verification of Conformity (PVoC) program. PVoC is a conformity assessment program where goods are subject to inspection and testing prior to export to ensure compliance with applicable Kenyan standards and regulations. Under the PVoC program, prior to shipment an importer must obtain a Certificate of Conformity (CoC) from a PVoC inspection agent designated by KEBS. The PVoC agent assesses what, if any, testing is required to meet Kenyan standards and regulations. Kenya asserts that the program is necessary to address health, environmental, and security concerns, but U.S. industry has raised concerns that the program includes low risk goods and imposes additional testing and certification costs and labeling requirements.

In December 2019, the Kenyan Government issued as final, without an opportunity for public comment, the Standards (Verification of Conformity to Standards and Other Applicable Regulations of Imports) Regulations, 2019, which subjects all imports to the PVoC program, except those meeting certain criteria for exemption. Certain products regulated under specific Kenyan laws, such as human and veterinary

pharmaceutical products, aircraft, marine craft, pesticides, plants, seeds and planting materials and live animals, are also exempt from the PVoC program.

Goods arriving at the port of entry without having undergone a PVoC to obtain a CoC, are subject to inspection by KEBS. The cost of verification is 5 percent of the customs value of the shipment, and goods may be rejected. After obtaining a PVoC or undergoing inspection at the port of entry, the importer must also receive an Import Standardization Mark, a stick-on label affixed to each imported article or its retail packaging, from KEBS for a fee.

In December 2020, KEBS indicated that amendments to Regulations 7 (Verification of Conformity) and 9 (Destination Inspection) of the Standards (Verification of Conformity to Standards and Other Applicable Regulations of Imports) Regulations had been proposed. The United States will encourage the Kenyan Government to afford an opportunity for public comment before finalizing these amendments.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Kenya has maintained a ban of genetically engineered (GE) food and feed imports since November 2012.

Kenya's GE ban has blocked both U.S. Government food aid and 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 trans-shipment. U.S. Government 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.

Kenya is in the process of commercializing Bt cotton, and research continues on other GE crops. 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 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 August 2020, the Bt cotton open field trials commenced in western Kenya. Kenya's commercialization of GE Gypsophila flower (baby's breath) intended for export, including to the United States, is stalled due to concerns that it could potentially jeopardize Kenya's market access to the European Union.

The U.S. Government continues to engage the Kenyan Government and stakeholders to support the adoption of GE and other emerging technologies.

Animal Genetics

In January 2020, Kenya's Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed to veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. However, in May 2020, DVS proposed additional requirements, beyond those previously agreed by the two agencies. Technical work is ongoing.

Meat, Milk, and Poultry Products

Although Kenya accepts standardized sanitary certifications for meat, dairy, and poultry products, Kenya maintains complex, non-transparent, and costly requirements for importation of all meat, dairy, and poultry products including a "Letter of No Objection to Import Permit" (no-objection letter) from DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, DVS requires an importer to explain the reason for importation through a "Letter of Application to Import" and to specifically address the market need the import would meet. DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that DVS has at times provided them with non-sanitary grounds for denying permits, such as the local availability of a certain like-product. DVS does not provide written rationale for not issuing the letter.

Plants and Plant Products

In January 2020, Kenya and the United States reached an agreement which resolved Kenya's concerns about flag smug fungus and resulted in approved a certification protocol, opening the market to U.S. Pacific Northwest wheat for the first time since 2006.

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 U.S. Food and Drug Administration action level 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.

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 prohibits bean imports due to the occurrence of *Corynebacterium flaccumfasciens* bacteria in some parts of the United States. Lentils are prohibited due to the threat of darnel weed; however, darnel weed already exists in Kenya.

GOVERNMENT PROCUREMENT

Since May 2015, an initiative dubbed "Buy Kenyan Build Kenya" has required Kenyan 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.

The Public Procurement and Asset Disposal Act (PPADA) of 2016 reserves 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 PPADA requires a report detailing evidence of an inability to procure locally. The PPADA calls for at least 30 percent of government procurement contracts to go to firms owned by women, youth, and persons with disabilities. The PPADA further reserves 20 percent of procurement contracts tendered at the county level for residents of that county. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate skills and knowledge transfer to Kenyan

citizens, a 75 percent set-aside of employment opportunities for Kenyans, and the inclusion of a local content plan for tender proposals.

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 procurements are required to be undertaken through the Integrated Financial Management Information System (IFMIS), an electronic procurement system, as of January 2019. Since the IFMIS was launched in 2014, there have been complaints about insufficient connectivity and technical capacity in county government offices, apathy from county government officials, and central control shutdowns. Moreover, IFMIS has security gaps that make it vulnerable to manipulation, including the duplication of authorized users' identities and non-users' ability to remotely access IFMIS.

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, which entered into force in January 2019, includes amendments that improve the protection and enforcement of intellectual property (IP) by updating Kenya's copyright and trademark legislation, including by enabling the 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

Insurance Services

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyan persons or citizens of one of the other EAC countries. 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 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. investment in countries such as Kenya because it covers unique risks faced by firms.

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.

Other Services

The 2016 Private Security Regulations Act 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.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Kenya's November 2019 Data Protection Act (DPA) includes unclear and potentially restrictive provisions governing the cross-border transfer of personal information. The DPA 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 DPA 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. Regulations implementing these provisions have yet to be released, nor has a political official, who would need to be confirmed by Kenya's National Assembly, been selected.

Internet Services

The Computer Misuse and Cybercrimes Act (the Act) was signed in May 2018, though certain key provisions of the Act were initially suspended by Kenya's judiciary, pending review of a petition challenging the constitutionality and legality of those provisions. Some of the initially 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. In February 2020, Kenya's High Court dismissed the challenges, ruling that the Act complied with Kenya's constitution, and lifted the suspension. While implementing regulations have yet to be issued, companies are required to comply with the Act's cybersecurity measures, and can be held liable for the publication of content deemed to be factually incorrect.

In August 2020, Kenya published the November 2019 National Information, Communications, and Technology (ICT) Policy, which updates a 2006 policy. While this ICT Policy is intended to facilitate universal access to ICT infrastructure and services, some provisions establish potential barriers to digital trade, including a local equity requirement that mandates that firms providing ICT services must have at least 30 percent Kenyan ownership, as well as preferences and incentives for Kenyan-owned ICT manufacturers.

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 2015 EAC Electronic Transactions Act (ETA) provides some protection of intermediaries from liability for non-IP-protected content created by third parties, however 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. The ETA could serve as a 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 30 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 2010 Kenya Insurance Act restricts foreign capital investment to two thirds, with no single person controlling more than 25 percent of an insurer's capital. Additionally, since 2015, Kenya has 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 (NCAA) 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 NCAA 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 NCAA 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 Kenya. As of early 2021, the National Assembly had not yet addressed the bill because of an error in the procedure by which it was introduced, but the bill is subject to re-introduction at any time.

A directive issued in 2015 makes it more difficult for non-Kenyans to obtain work permits. As of 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 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 not allowed. Under the 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, the Government of 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, Kenya Electricity Transmission Company, Kenya Power and Lighting Company (KPLC), and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. KPLC's internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies 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.

The 2019 Land Index (amendment) bill guides compensation for land compulsorily acquired for use in government projects. The value of compensation is 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.

In January 2020, Kenya 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 have brought to light by the EACC have resulted in convictions, no high-profile cases have resulted in conviction.

Despite efforts to increase efficiency and public confidence in the judiciary, a backlog of cases and continuing corruption 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. An export levy of 20 percent on the approved export of copper waste and scrap metal encourages local smelting, enhances the value of local copper waste, and discourages black market export of copper cables and wires. The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia nuts, bixa orellana, cashew nuts, and pyrethrum without express authorization from the Kenyan Cabinet Secretary for Industry, Trade, and Cooperatives.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $24.8 billion in 2020, a 18.5 percent increase ($3.9 billion) over 2019. U.S. goods exports to Korea were $51.2 billion, down 9.4 percent ($5.3 billion) from the previous year. Corresponding U.S. imports from Korea were $76.0 billion, down 1.9 percent. Korea was the United States' 7th largest goods export market in 2020.

U.S. exports of services to Korea were an estimated $24.0 billion in 2019 and U.S. imports were $10.6 billion. Sales of services in Korea by majority U.S.-owned affiliates were $16.4 billion in 2018 (latest data available), while sales of services in the United States by majority Korea-owned firms were $35.9 billion.

U.S. foreign direct investment in Korea (stock) was $39.1 billion in 2019, a 0.2 percent increase from 2018. U.S. direct investment in Korea is led by manufacturing, nonbank holding companies, and finance and insurance.

TRADE AGREEMENTS

United States–Korea Free Trade Agreement

The United States–Korea Free Trade Agreement (KORUS) entered into force on March 15, 2012. Korea immediately eliminated duties on nearly 80 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over 10 years and have been eliminated as of January 1, 2021. The United States and Korea reached agreement in 2018 to modifications and amendments to KORUS and a related letter exchange. These modifications and amendments entered into force on January 1, 2019, and include 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. 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. The United States and Korea meet regularly to review the implementation and operation of KORUS and to address outstanding issues.

IMPORT POLICIES

Tariffs

Under KORUS, Korea has now eliminated tariffs on nearly all U.S. industrial goods exports. Tariffs continue to be phased out for certain seafood products. Korea has eliminated tariffs on the majority of U.S. agricultural products, while maintaining tariff-rate quotas (TRQs) on a handful of U.S. food exports. 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, soymeal, barley, and oats.

Rice is excluded from Korea's tariff commitments under KORUS, and under the WTO Agreement on Agriculture, Korea benefitted from special treatment that enabled it to control imports of rice with quotas that increased between 1995 and 2004. In 2004, Korea negotiated a 10-year extension of this special treatment with other WTO members, subject to a Minimum Market Access (MMA) agreement. At the end of the MMA agreement, Korea chose to "tariffy" its import regime for rice rather than to seek another

extension of special treatment. Negotiations with the United States, Australia, China, Thailand and Vietnam resulted in a Plurilateral Agreement completed in December 2020, which provides the United States with a country-specific quota of 132,304 metric tons, with a five percent in-quota tariff and 513 percent over-quota tariff.

Origin Verification

The United States has worked closely with Korea to resolve issues surrounding onerous verifications by the Korea 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 with the Ministry of Trade, Industry and Energy (MOTIE) and KCS 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, including with regard to: the lack of guidance around implementation, the insufficient time for companies to implement the requirements, and AREC's insufficient protection for confidential business information. A low volume exemption from AREC applies to companies importing under 100 kilograms (kg) annually. The Ministry of Environment (MOE), however, has 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 proposal's adoption would introduce uncertainty to business planning and adds a further compliance burden on chemical importers.

The Korean Occupational Health and Safety Act, which deals with hazardous chemicals, was fully revised as of January 15, 2019, and its new approval process for protection of confidential business information took effect in January 2021. The United States will monitor the implementation of the amendments.

The Korea Persistent Organic Pollutants Control Act, as amended on September 11, 2020, prohibits the manufacture, import, and use of perfluorooctanoic acid and its salts. The Korean Government has not clarified when the new restrictions will take effect, or how the relevant products will be tested and the component chemicals measured. Under these circumstances, industry has raised serious concerns that firms cannot adequately prepare for compliance with the law. The United States will monitor the implementation of the amendments.

In 2018, MOE proposed an amendment to the Chemical Control Act which would require 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 that compliance in declaring contents of third-party supplied materials would be difficult. If U.S. exporters cannot fulfill the requirements, they may cease exporting

these substances to Korea. The proposed amendment has not yet been adopted, however. The United States continues to urge Korean ministries to adopt international standards to support a risk-based approach to regulations, and will continue to engage Korean authorities if implementation progresses.

Wood Products

The United States has urged Korea to recognize the North American standard for oriented strand board. After several years of U.S. engagement, in 2018, the Korea Forest Service established parameters under the Foreign Quality Inspection Institute (FQII) Act 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. In 2019, the American Lumber Standards Committee applied for FQII accreditation in Korea, but in June 2020, the Korean Forest Service's National Institute of Forest Science informed the American Lumber Standards Committee that they could not be designated as a FQII.

Packaging Materials and Labeling Regulations

On December 24, 2018, Korea issued the Act on the Promotion of Saving and Recycling of Resources (Recycling Act). The Act focuses on consumer products packaging and requires packaging evaluation, gradation, and labeling with respect to recyclability. In January 2019, MOE issued the draft Package Recycle Classification Regulation, which specifies the criteria used to evaluate and label packaging materials and methods. Despite multiple requests for notification to the WTO, Korea finalized the regulation in April 2019 without doing so. The regulation requires a wide range of products to have packaging labeled as "difficult" or "easy" to recycle. The regulation did not include guidance on the labeling requirements and industry is concerned that using stickers containing the Korea-specific information over the existing packaging (rather than different packaging for Korea) will not be allowed. Korea subsequently provided notifications to the WTO. The United States submitted comments to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) in November 2019 and raised the issue in the WTO TBT Committee meetings in February and May 2020. The United States also raised the issue in the KORUS TBT Committee in 2019.

The Recycling Act includes a nine-month grace period for grading and evaluation, followed by a 15-month grace period for labeling. If a product does not meet the requirements of the Act, manufacturers are given an improvement period of one year to comply, or up to three years if there are changes to the manufacturing process. It is unclear if the improvement period follows or runs concurrently with the grace period. If a product does not meet the requirements of the Act following the grace and improvement periods, a ban or fine may be imposed. MOE may grant an exemption if certain packaging is required for people's diet or for medicines, or if no technically viable packaging alternatives exist.

Amendments to the Recycling Act proposed in August 2020 and November 2020 would mandate pre-launch testing of packaging materials and labeling of small electronic products to ensure compliance with specified packaging requirements. Stakeholders have raised concerns that the amendments would raise costs and delay product releases. The United States continues to seek clarifications about these rules.

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 potential reforms to its regulatory process. The United States and private industry provided ideas on how to improve the process and developed pilot projects to test a streamlined process for biotechnology reviews. These initiatives have had little impact, because Korea's Living Modified Organisms Act mandates participation by five agencies, limiting the potential for streamlining the system without legislative changes. The United States had multiple discussions with MOTIE and other relevant agencies throughout 2020 and will continue to engage with Korea on improving its approval process for agricultural biotechnology.

Poultry

Korea detected semicarbazide (SEM) residues in a shipment of U.S. poultry in early 2017, followed by detections of this residue in subsequent shipments. SEM is a metabolite that can be an indicator of the presence of nitrofurazone, a veterinary drug that is banned in both the United States and Korea. The U.S. Department of Agriculture's Food Safety and Inspection Service maintains that SEM is a poor marker for the presence of nitrofurazone in poultry. The United States continues to work to determine the source of SEM residues and to reiterate that it is not caused by the use of nitrofurzone. This is increasingly important as Korea reported two additional SEM detections in beef feet in late 2019 and 2020 and subsequently delisted the U.S. poultry processing facility.

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 (an adult cattle brain disorder that can be spread to humans through diseased meat). 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 more than a decade later. In addition, imports of processed beef products, including ground beef patties, beef jerky, and sausage are still prohibited. In 2020, the United States exported over $1.7 billion in beef to Korea, making Korea the second largest export market for U.S. beef by value and by volume.

In 2020, following a point of entry violation and a U.S. beef establishment delistment, the United States again raised concerns with Korea's approach of applying the Codex Alimentarius (Codex) maximum residue limit (MRL) for muscle tissue to detections of ractopamine in tripe. The United States will continue to engage with Korea to resolve this discrepancy in MRLs and relistment of establishments.

The Ministry of Food and Drug Safety (MFDS) delisted U.S. beef establishments after detecting ractopamine residues in beef. MFDS allows ractopamine use in U.S. meat exports, but has set MRLs in certain tissues that are far more stringent than international standards established by Codex. Like poultry, these actions on beef have effectively suspended U.S. exports from certain U.S. establishments with no clear path for regaining market access.

Horticultural Products

Several U.S. market access requests remain pending with Korea's Ministry of Agriculture, Food and Rural Affairs' (MAFRA) Animal and Plant Quarantine Agency. Among these are expanded access for U.S. blueberries from States other than Oregon; improvement in the cherry import program; and access for apples, pears, and stone fruits. The United States requested that MAFRA expedite the approval process for these products. The United States and Korea continued efforts to establish access for U.S. exports, and discussed these issues during a meeting of the KORUS Sanitary and Phytosanitary Measures (SPS)

Committee in December 2020. The United States will continue to press Korea to allow imports of these fruits from the United States.

Maximum Residue Limits

MFDS has been 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 an MRL has been established. Korea began a phased implementation of 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 determined a timeline for implementation.

Korea requires the establishment of new import tolerances for agrochemicals 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. To minimize disruption to trade, Korea delayed the full elimination of existing MRLs for agrochemicals not registered for use in Korea until the end of 2021. Beginning in 2022, Korea's temporary MRLs will be cancelled and U.S. agricultural exports will be required to meet Korea's domestic MRLs, import tolerances (ITs), or a default of 0.01 parts per million (ppm). Korea has created more than 5,000 temporary MRLs that apply to both imported and domestic products and that will be in effect until MFDS completes its review, or until the end of 2021. The United States continues 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 KDB is a state-owned enterprise that provides government assistance to targeted 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 a 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 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 of $182,000). While KORUS does not cover procurement by Korean sub-central government entities and government enterprises, the GPA 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).

The Korean Government has instituted a number of policies intended to promote domestic SMEs that discriminate against U.S. firms. Korea does not cover set-asides for SMEs under the WTO GPA or KORUS. 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 categorized as "large" (regardless of their actual size) simply by virtue of their being foreign-based or multinational, while local companies are categorized as "small" or "medium." As such, "large" foreign companies are only able to bid on projects valued more than $220,000, while most local companies can bid on the majority of projects. 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.

In November 2020, MOTIE announced a "Localized Gas Turbine Competitiveness Plan" which included a proposal to procure locally-developed technology. The United States has raised concerns with how this proposal would be implemented and will continue to engage with Korea to ensure that implementation is consistent with Korea's international procurement obligations.

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. The Korean Government, however, requires network equipment procured by government agencies to undergo additional verification in Korea by government authorities, even if the products received CCRA certification outside Korea. Korea's National Intelligence Service (NIS), which leads this process, has managed the verification process in a non-transparent fashion, without soliciting public comment, and has broadened these requirements beyond areas of national security to apply to any government entity, including schools, local governments, libraries, and museums. U.S. stakeholders have raised concerns that Korea is also expanding the scope of these requirements (including additional verification) to products not normally considered "security" products, such as routers, switches, and Internet Protocol private branch exchange devices (IP-PBX). The United States has raised this issue with Korea in bilateral consultations and will continue to work with Korea in 2021, 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-developed ARIA and SEED encryption algorithms (which, although recognized as ISO standards, are in practice primarily used in Korea), rather than the internationally standardized Advanced Encryption Standard algorithm in widespread use worldwide. Some U.S. suppliers have not been able 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. In 2016, the Korea Internet and Security Agency created a Cloud Security Assurance Program (CSAP) governing public sector cloud service procurement. The CSAP 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 program without creating a separate Korea-unique product, including segregating facilities for exclusive use for government-owned customers. Such an

approach undermines the economies of scale of cloud computing and thus one of its primary benefits. It also appears unprecedented among developed countries, which, apart from national security applications, have generally embraced a "multi-tenant" architecture, allowing both commercial and public sector customers to share the same computing resources, subject to robust access controls. In Korea 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 prioritizes IP protection, as Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including with respect to: the transshipment of counterfeit goods, especially via small express-shipped parcels; geographical indications; collective rights management and statutory license fees for digital music services; and a lack of civil and criminal penalties sufficient to deter IP violations. The United States continues to work with Korea to improve these areas.

In January 2021, amendments to the Copyright Act were introduced in the National Assembly. Stakeholders have expressed concerns over the amendments, including in the areas of collective licensing; a lack of clarity concerning the scope and application of and possible extensions to the digital audio transmission right; the introduction of portrait rights into the Copyright Act; and possible restrictions on the freedom to contract. The United States continues to engage with Korea on the proposed amendments and urge Korea to ensure that interested stakeholders have meaningful opportunities to provide input.

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 in either the first half or second half of the year. Within those overall quotas, Korea further limits 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 six-month quota limits content from any one country to 80 percent of the total quota available to foreign films, animation, or music. KORUS protects against quota increases in the allocation to domestic content and ensures that new platforms, such as online video and streaming music, are not subject to these legacy limits.

Korea also maintains a screen quota for domestic films shown in theaters, requiring local movie screens show domestic films at least 73 days per year.

The Broadcasting Act contains restrictions on voiceovers (dubbing) and local advertising for channels retransmitting foreign content. 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 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 affiliates outside Korea to perform certain data processing and other functions. 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 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 restrictions on third-party outsourcing or re-outsourcing; establish a broader application of *ex post facto* reporting requirements to process consumer or corporate transaction data; and abolish the Financial Supervisory Service security review in the application process. Despite these positive steps, substantial consent requirements, such as consent for both the specific data being transferred and the specific purpose for the transfer continue to hinder U.S. companies. This is true in particular for the reinsurance industry which is effectively blocked from utilizing cross-border transfer of data necessary in the normal course of business. This restriction is 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 continued in 2020 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 the transfer of data.

Responding to industry requests, the FSC announced the Plan for Expansion of Cloud Usage in the Financial Sector in July 2018. According to the Plan, the FSC intended to revise provisions in the Regulations on Supervision of Electronic Finance and Data Protection Standards for Cloud Computing Services (so-called CCPA Guidelines) by the end of 2018. However, the amendments remain in draft form. The FSC states that the purpose of these amendments is to expand use of the cloud by financial companies and technology firms to develop new products and services with regard to all types of information, including personal credit and personal identity information. While industry welcomed the move by FSC to expand the use of cloud computing services, Korea has failed to address 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 of cloud service providers. In addition to limiting the flexibility of foreign financial service suppliers, such policies significantly limit commercial opportunities for U.S. cloud service suppliers and 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 issues.

Franchising Services

U.S. stakeholders have raised concerns for years about the activities of the Korea Commission for Corporate Partnership (KCCP) (formerly known as the National Commission on Corporate Partnership), which imposes restrictions on the expansion of U.S. brands that partner with Korean conglomerates. The KCCP is a partially-government-funded organization, created by the 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 through an annual "win-win scorecard" on how large businesses co-exist with SMEs and designating "suitable industries for SMEs." As mentioned in the Government Procurement section above, U.S. businesses are often designated as "large" regardless of size, and therefore excluded from these designated sectors.

Professional Services

Since 2013, Korea has taken steps to open its legal services market as outlined in KORUS. The first step was to create a legal status for foreign legal consultants and allow 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 2014, allowed FLC offices to enter into "cooperative agreements" with Korean firms to jointly handle cases where domestic and foreign legal issues are mixed. The third stage, implemented as of March 2017, allowed foreign licensed lawyers and firms to establish joint ventures and hire Korean-licensed lawyers.

However, this third stage, which was implemented through legislative 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 amendments allow 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 existing 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.

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 because locally-based competitors typically are not dependent on foreign data processing centers and do not need to export location-based data. 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. U.S. stakeholders have reported that Korean officials, citing security concerns, are linking such approval to a separate issue: a requirement to blur certain integrated satellite imagery of Korea, which is readily viewable on other global mapping sites based outside of Korea. 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 customers' personal 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. Less stringent requirements apply to data transfers to third parties within Korea. 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 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 requirements, including heavy fines for telecommunications and online service providers that transfer personal data across borders 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 laws 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 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 localization requirements on facilities with respect to payment gateway services, preventing suppliers from leveraging investments in facilities located outside Korea. While ostensibly designed to ensure payment data remains in Korea for privacy purposes, such a requirement does not necessarily 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 electronic commerce services into Korea, since local currency payments are integral to any comprehensive electronic commerce distribution service.

In May 2020, Korea's National Assembly passed an amendment to the Telecommunications Business Act, which requires large content providers to ensure network stability and to appoint local representatives. Industry has voiced concerns that this stability provision obligates content providers to guarantee quality of service on networks they do not control.

As of March 2021, Korea's National Assembly was considering legislation that would require mobile application marketplaces to permit users to make in-application purchases through payment platforms not controlled by the marketplace itself. U.S. providers of mobile application marketplaces draw a standard commission globally from in-application purchases made using integrated payment platforms. The requirement to permit users to use outside payment services appears to specifically target U.S. providers and threatens a standard U.S. business model that has allowed successful Korean content developers to reach global audiences. In the absence of a payment service integrated into a mobile application marketplace, it is unclear how the application distributor could recover the costs it incurs in maintaining the mobile application marketplace, and monetize the broad benefits accorded to all application developers, including those from Korea.

INVESTMENT BARRIERS

U.S. investors have 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 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. Firms that generate, distribute, and sell electric power, as well as those that publish periodicals other than newspapers are also restricted. Electric 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 in 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 about KFTC's procedures and practices which inhibit the ability of companies to adequately defend themselves during investigatory proceedings and hearings. The United States has had extensive discussions with KFTC regarding the right of companies to reasonably access and rebut evidence used to determine if companies have violated Korea's competition laws. In 2019, the United States requested and held formal consultations with Korea under the Competition Chapter of KORUS to discuss these concerns.

In September 2020, an amendment to the Monopoly Regulation and Fair Trade Act (MRFTA) was introduced which would expand the rights of affected parties to view or copy data related to KFTC administrative decisions. In addition, in December 2020, KFTC implemented a restricted data access

system which allows independent legal counsel of the parties involved to view confidential business information under limited conditions. The United States will continue to monitor the implementation process of the MRFTA amendment and engage with Korea in 2021 on this issue.

U.S. companies complained that Korean regulatory authorities use their enforcement powers to boost sales for Korean companies at the expense of U.S. competitors, especially in the competitive mobile phone market.

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 comply with Korea's fuel emission standards using the same tests they conduct to show compliance in the United States. U.S. automobile exports to Korea increased by over 309 percent from 2012 to 2020, from $617 million in 2012 to $2.5 billion in 2020.

In February 2021, Korea adopted final regulations for the next tranche of its CO_2/CAFE targets, which cover the years 2021 to 2030. U.S.-owned automobile manufacturers have voiced concerns that these regulations will be onerous for their products, in particular due to the divergence between Korea's CO_2/CAFE requirements and the corresponding U.S. requirements.

Industry has also raised concerns about the Emission Related Components modifications and enforcement actions taken against vehicle manufacturers by Korean regulatory bodies. Under Korea's Clean Air Conservation Act, vehicle manufacturers and importers are required to obtain MOE modification certifications or prepare modification reports even for insignificant 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 Korea's 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 and other issues closely to ensure further increased access of U.S. vehicles to Korea's automobile market.

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 in Korea's pricing and reimbursement policies, as well as in 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 the criteria for the program raised concerns of discrimination favoring 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 ensure 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 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 will continue to engage on this issue with Korea.

Stakeholders in the U.S. medical devices sector also have concerns about Korea's pricing and reimbursement system, including regarding 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 $1.6 billion in 2020, a 9.7 percent decrease ($170 million) over 2019. U.S. goods exports to Kuwait were $2.2 billion, down 29.3 percent ($931 million) from the previous year. Corresponding U.S. imports from Kuwait were $657 million, down 53.7 percent. Kuwait was the United States' 57th largest goods export market in 2020.

Sales of services in Kuwait by majority U.S.-owned affiliates were $863 million in 2018 (latest data available), while sales of services in the United States by majority Kuwait-owned firms were $735 million.

U.S. foreign direct investment in Kuwait (stock) was $398 million in 2019, a 20.2 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Kuwait Trade and Investment Framework Agreement

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in February 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Kuwait.

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 several 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 an average WTO bound tariff rate of 97.9 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). Kuwait introduced supporting legislation in the National Assembly in 2018, where it remains under debate. U.S. beverage producers report that the proposed tax structure, which also applies to sugar-free carbonated beverages, 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 2016, GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent. Kuwait has taken no action to implement the VAT.

Non-Tariff 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, a certificate from the chamber of commerce, copies 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. It must then undergo sample testing upon importation into Kuwait.

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 they do so by prescribed deadlines. Kuwait was due to submit these categorizations by August 2019 but has not yet done 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

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO Committee on Technical Barriers to Trade in October 2020.

Restrictions on Hazardous Substances – Electrical Goods

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would, among other things, require pre-market testing by accredited labs for restricted materials in electrical goods. The measure would also require each type of good to be registered annually, and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised

concerns that pre-market testing has a significant negative impact on the imports of U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as such testing differs from more common practices to demonstrate that products comply with restrictions on hazardous substances regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that 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 and requires foreign contractors to purchase at least 30 percent of their inputs domestically and to subcontract 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 and burdensome, and lacks transparency.

Kuwait is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

In 2020, Kuwait moved from the Special 301 Report Priority Watch List to the Watch List. Kuwait took steps to reform its system of copyright protection and enforcement by passing the 2019 Copyright and Related Rights Law and the related implementing regulations, as well as increasing IP enforcement by Kuwaiti officials.

Some provisions of the new copyright law remain unclear, such as ambiguities in certain definitions and the scope of protection. The United States has acknowledged that IP enforcement increased in 2020, but improvements in Kuwait's enforcement efforts are still needed, especially regarding enhanced outreach and communication with trademark and copyright owners, implementation of a modern customs recordation system, and the coordination of investigations and enforcement actions between enforcement authorities.

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 bank members of the Kuwait Banking Association may operate in Kuwait. However, 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 $80 million in 2020, a 38.7 percent decrease ($51 million) over 2019. U.S. goods exports to Laos were $25 million, up 45.0 percent ($8 million) from the previous year. Corresponding U.S. imports from Laos were $105 million, down 29.0 percent. Laos was the United States' 183rd largest goods export market in 2020.

TRADE AGREEMENTS

The United States–Laos Trade and Investment Framework Agreement

The United States and Laos signed a Trade and Investment Framework Agreement (TIFA) on February 17, 2016. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Laos.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Laos' average Most-Favored-Nation (MFN) applied tariff rate was 8.6 percent in 2019 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.2 percent for non-agricultural products in 2019.

Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound MFN tariff rate that will be 19.2 percent when all of its WTO accession commitments come into force in 2023. By contrast, almost all imports from the Association of Southeast Asian Nations (ASEAN) Member States currently benefit from substantial tariff concessions, with tariff rates of five percent or less.

Taxes

Laos has implemented 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. The VAT for exported goods is zero percent except for the export of natural resources that are unfinished goods, which are subject to a 10 percent VAT. 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. Excise tax rates range from 5 percent to 90 percent. U.S. and other foreign businesses have raised concerns with both the U.S. Government and the Lao Government about duplicative, arbitrary, or selectively enforced tax provisions.

Non-Tariff Barriers

Import Licensing and Restrictions

The Lao Government has gradually removed license requirements for some imports, although certain products, including motor vehicles, refined petroleum fuels and oil, natural gas, and timber products, are still subject to import licensing. Laos is in the final stages of updating its import licensing requirements but has yet to notify relevant WTO committees.

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.

In 2019, the Customs Department at the Ministry of Finance introduced the Lao National Single Window to simplify customs processes and connect Laos to the regional ASEAN Single Window.

TECHNICAL BARRIERS TO TRADE

Vehicles

The 2019 Lao Government Decree No. 470 on the management of land vehicles requires that imported vehicles registered and used in Laos meet regional and international standards and are in accordance with the treaties and international agreements to which Laos is a Party. Further regulations are anticipated, and the United States will continue to monitor the development of proposed regulations in 2021.

GOVERNMENT PROCUREMENT

Laos is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

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). Laos continues to improve its IP regime, including by issuing regulations to implement its Law on Intellectual Property, and continues to increase public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries. However, counterfeit and pirated goods continue to be available in Lao marketplaces.

The United States will continue to engage with Laos under the TIFA and other dialogues to urge Laos to take steps to further 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 2005 United States–Laos Bilateral Trade Agreement.

Financial Services

In November 2017, the National Assembly passed the Law on National Payments. The law establishes a Payment Systems Department in the Bank of the Lao PDR (BoL). This Department 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. 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 Lao 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. 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.

On June 1, 2020, the BoL officially launched its Lao Payment and Settlement System (LaPASS). The BoL claims that LaPASS will be an integrated payment system that will provide a payment platform for commercial banks with the ability to facilitate financial transactions. There are currently 41 members consisting of commercial banks and the Ministry of Finance.

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 for obtaining investment licenses are often inconsistent or inefficient. Laos requires an annually renewable business license, receipt of which is contingent on a certification that all taxes have been paid. However, the Lao Government often assesses taxes 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

Laos issued Decree 327 on Information Management on the Internet in 2014, which creates legal vulnerabilities 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, current government leadership has prioritized anticorruption efforts. Laos has improved 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, Laos released a "Lao Law" smart phone app, which allows the public to download a free platform

to 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 $31.7 billion in 2020, a 15.7 percent increase ($4.3 billion) over 2019. U.S. goods exports to Malaysia were $12.5 billion, down 5.3 percent ($693 million) from the previous year. Corresponding U.S. imports from Malaysia were $44.2 billion, up 8.9 percent. Malaysia was the United States' 22nd largest goods export market in 2020.

U.S. exports of services to Malaysia were an estimated $3.1 billion in 2019 and U.S. imports were $2.4 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $8.2 billion in 2018 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were $609 million.

U.S. foreign direct investment (FDI) in Malaysia (stock) was $10.8 billion in 2019, a 0.2 percent decrease from 2018. There is no information on the distribution of U.S. FDI in Malaysia.

TRADE AGREEMENTS

The United States–Malaysia Trade and Investment Framework Agreement

The United States and Malaysia signed a Trade and Investment Framework Agreement (TIFA) on May 10, 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Malaysia.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Malaysia's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2019 (latest data available). Malaysia's average MFN applied tariff rate was 7.7 percent for agricultural products and 5.3 percent for non-agricultural products in 2019 (latest data available). Malaysia has bound 84.3 percent of its tariff lines in the World Trade Organization (WTO), with an 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 268 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 of 10 percent to 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.

Due to the COVID-19 pandemic, Malaysia introduced several new tax measures. In the automotive sector, the government adopted the exemption of sales tax for passenger cars sold from June 15, 2020 through December 31, 2020 to boost motor sales. The new tax measure includes a 100 percent sales tax exemption on locally assembled cars (also referred to as completely knocked-down cars) and a 50 percent sales tax exemption on fully imported cars (also referred to as completely built-up models).

Non-Tariff 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 and generally meets its advance ruling obligations under the TFA (Article 3). Although advance rulings on the origin of goods have yet to be implemented fully, in 2020 Malaysia inserted, "the means to apply for an advance ruling with respect to the origin of goods" as new subsection 10A(1)(aa) of the 1967 Customs Act.

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 is used to implement a cap on the total number of vehicles that can be imported in a given year, currently 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 model 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) 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). 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 November 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.

Distilled Spirits

U.S. stakeholders expressed concerns about May 2016 amendments to Malaysia's food and beverage regulations that affect alcoholic beverages. Issues 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 2021, 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, although it has not enforced this regulation. As of March 2021, Malaysia has approved 46 GE products for market release for use in food, feed, and processing (five for cotton, three for canola, 20 for corn, three for potatoes, and 15 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, as highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur on the Notorious Markets List. Other concerns include unauthorized camcording sourced to Malaysian cinemas, online and book piracy, and issues related to pharmaceutical patents. The United States has urged Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation. In April 2020, 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.

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

Best Interest Test

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 Financial Services Act, Bank Negara Malaysia (Malaysia's central bank) evaluates potential investments in these types of financial institutions based, among other criteria, on whether the investment serves the "best interests of Malaysia," including its impact on economic productivity and financial stability and the degree to which it strengthens Malaysians' participation in the financial sector. Bank Negara Malaysia has not released specific criteria for how it evaluates foreign investments using this definition.

Even after the Financial Services Act removed the previous equity limit, some companies still have been required to reduce foreign equity to 70 percent to remain in the Malaysian market. Bank Negara Malaysia 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 March 2020, Bank Negara Malaysia published an "Exposure Draft on Licensing Framework for Digital Banks," which proposes a framework for digital banks to pursue entry into the Malaysian market. The draft includes language referencing the "best interests of Malaysia" criterion for license applications, which includes a commitment to "driving financial inclusion" and ensuring access for "underserved or hard-to-reach segments" of the population.

Data Localization

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 cybersecurity violations, the United States encouraged Malaysia to allow financial institutions to utilize hardware and software systems globally to effectively manage international security and commercial risk. Bank Negara Malaysia re-posted the outsourcing draft for a second round of stakeholder comment in October 2018 and released the final "Policy Document on Outsourcing." 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.

E-Payment Requirements

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 services, 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 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 "application service providers" (*i.e.*, suppliers who do not own underlying transmission facilities). However, Malaysia has not allowed equal liberalization of the network facilities provider or 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 Malaysian Government expected to liberalize these categories fully in 2020 as part of the National Fiberisation and Connectivity Plan (NFCP); however, the change in government in March led the NFCP to drop these changes in favor of the National Digital Infrastructure Plan (NDIP). It is not yet clear whether the NDIP will include further liberalization of these subsectors.

Oil and Gas Services

Malaysia is in the process of adopting market-based gas pricing as Petroliam 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. In May 2020 Malaysia reduced its export duty on crude palm oil (CPO) to zero percent from 4.5 percent. In June 2020, as part of a stimulus package to revitalize industries hit by the COVID-19 pandemic, Malaysia announced it would fully exempt all palm oil exports from July through December 2020. Refined palm oil and refined palm oil products are not generally subject to export taxes. Malaysia also taxes exports of rubber, timber, and metal products 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 to reduce exchange rate volatility. All domestic trade in goods and services must be transacted in ringgit, 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 due 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 their availability. 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.

In May 2020, Bank Negara Malaysia updated its foreign exchange policies, permitting transactions for exports of goods up to the equivalent of RM200,000 (approximately $48,000) in foreign currency. Previously, exporters had to convert all of the export proceeds received into Malaysian Ringgit. Exporters also were required to receive export proceeds in foreign currency by 24 months (previously six months) from the date of shipment where the amount of export proceeds does not exceed RM200,000 (approximately $48,000) per invoice, if, inter alia, the exporter has no control over the delay in the receipt of export proceeds.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $112.7 billion in 2020, a 11.2 percent increase ($11.3 billion) over 2019. U.S. goods exports to Mexico were $212.7 billion, down 17.1 percent ($43.9 billion) from the previous year. Corresponding U.S. imports from Mexico were $325.4 billion, down 9.1 percent. Mexico was the United States' 2nd largest goods export market in 2020.

U.S. exports of services to Mexico were an estimated $32.9 billion in 2019 and U.S. imports were $29.8 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $42.7 billion in 2018 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $10.1 billion.

U.S. foreign direct investment in Mexico (stock) was $100.9 billion in 2019, a 5.2 percent increase from 2018. U.S. direct investment in Mexico is led by manufacturing, finance and insurance, and nonbank holding companies.

TRADE AGREEMENTS

The United States–Mexico–Canada Agreement

On January 29, 2020, the President signed legislation implementing the United States–Mexico–Canada Agreement (USMCA). The USMCA entered into force on July 1, 2020, modernizing and replacing the North American Free Trade Agreement (NAFTA). The USMCA maintains the zero tariffs among the three countries that were in place under the NAFTA.

The USMCA is a mutually beneficial win for North American farmers, ranchers, businesses, and workers that will support high-paying jobs for Americans and help grow the U.S. economy. It modernizes and rebalances U.S. trade relations with Mexico and Canada to benefit American workers and businesses, including by providing strong, enforceable labor and environmental obligations in the core text of the Agreement. The USMCA upgrades the NAFTA in a number of key areas, including by expanding U.S. access in Mexico for certain U.S. dairy, poultry, and egg products as well as establishing some of the strongest and most advanced provisions on intellectual property rights (IP) and digital trade ever included in a trade agreement. Finally, it also includes a number of ground-breaking provisions to combat non-market practices that have the potential to disadvantage U.S. workers and businesses, such as currency manipulation and the provision of subsidies to state-owned enterprises.

IMPORT POLICIES

Non-Tariff Barriers

Import Licensing

Since December 2013, Mexico has required importers to obtain a license before certain steel products may be shipped to Mexico. Mexico's stated objectives for the licensing system are to combat customs fraud, improve enforcement of trade remedy measures, and improve statistical monitoring of steel imports. However, administrative delays and complicated procedures for the processing of license applications by the Secretariat of Economy have resulted in U.S. steel exporters and their Mexican customers facing disruptions in supply chains and additional shipment or demurrage costs. In order to address these

disruptions, Mexico has established an alternative scheme with streamlined licensing requirements for certain U.S. exporters and their customers. The United States continues to 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 regulates imports of footwear, apparel, and textile goods through the use of reference prices and import licenses. According to Mexico, these measures are designed to protect Mexico's domestic footwear and apparel industries from the importation of undervalued goods. In December 2018, the Secretariat of Economy abruptly canceled automatic import licenses for several U.S. companies based on alleged "inconsistencies", which Mexico has yet to adequately explain as of March 2021. In addition, U.S. exporters expressed concerns about the lack of transparency in how reference prices are determined and uneven enforcement by Mexico's customs and tax authorities. The United States continues to monitor these issues and encourages the Secretariat of Economy and Mexico's customs authority, the Tax Administration Service (SAT) to clarify how requirements are applied.

Customs Barriers and Trade Facilitation

Mexico ratified the World Trade Organization (WTO) Trade Facilitation Agreement in July 2016. However, U.S. exporters continue to express concerns about Mexico's administrative customs 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. Two recent changes to customs procedures at the border were made with less than 24 hours' notice to traders, causing disruptions that left trucks lined up at the border and companies scrambling to comply.

Further, Mexico continues to place unwarranted limits on the number of ports at which a customs broker may operate. Article 161 of Mexico's Customs law continues to impose a numerical limit on the number of ports where a customs broker may operate if the broker is not part of a customs agency. The United States continues to discuss with Mexico the possibility of amending the law to allow brokers to operate at any port where the broker is capable of performing his or her duties.

On June 30, 2020 Mexico raised its "*tasa global*" rate, which is the combined duty, tax, and fee that Mexico applies to goods entering the country through a less formal clearance process that is provided for express delivery shipments by non-registered importers, often for express shipments sent directly to consumers. This increase was made with no meaningful notice, or opportunity for public comment. U.S. stakeholders have indicated that the increase in the rate on shipments valued between $51 and $117 is particularly burdensome, given the USMCA's exemption for duties on imports valued in that range.

Customs procedures for express packages are also burdensome. Consolidation of express shipments over $300 is restricted and Mexico continues to limit the number of shipments that may be delivered to a single recipient per month. Express delivery providers must also re-register to operate in Mexico every year, even if their operations have not changed. U.S. companies are also frustrated that SAT has not instituted a periodic payment option for express delivery shipments.

U.S. exporters have highlighted the lack of pre-clearance procedures at some border crossings. On October 15, 2015, the United States and Mexico signed a memorandum of understanding (MOU) that allows for the launch of cargo pre-inspection pilot programs. Ten cargo pre-inspection programs are in operation as of March 2021.

A goal of the USMCA's Customs Administration and Trade Facilitation chapter is to 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. However, some imports are still not allowed in all ports-of-entry. Restricting goods to certain ports has made it difficult for U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases involving small- and medium sized enterprises (SMEs).

The United States chaired the inaugural meeting of the USMCA's trilateral Committee on Trade Facilitation on September 9, 2020, where the Parties discussed, *inter alia*, the Parties' domestic measures to implement USMCA commitments, communication with traders (including SAT's communication specifically), and rules of procedure. The United States will call for continued regular meetings of this committee throughout 2021.

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, which entered into force on June 3, 2019, created new testing and certification requirements for certain products that previously were not subject to mandatory NOM compliance, creating new burdens for U.S. exporters.

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).

On October 1, 2020, the Secretariat of Economy introduced additional changes to Annex 2.4.1, eliminating three exemptions for compliance with 14 labeling NOMs. The elimination of these exemptions affected exporters of wholesale and bulk products destined for the hospitality industry and manufacturing sector, among others. Customs officials blocked these shipments from entering pending compliance, leading to significant delays at the border. Following weeks of private sector and U.S. Government engagement, the Secretariat of Economy released additional guidance to clarify which items required labeling per the NOMs, mitigating the delays at the border. Engagement on these issues continues.

Medical Devices, Supplies, and Pharmaceuticals

Changes to product approval, registration, and testing requirements are unclear to industry representatives. In addition, several 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 (COFEPRIS).

Glyphosate

Mexico's Secretariat of the Environment and Natural Resources (SEMARNAT) has rejected import permits for glyphosate-containing products. Mexico has not provided an opportunity for public comment, submitted notifications to the WTO, or provided scientific evidence for the rejections.

On December 31, 2020, Mexico issued a decree that calls for the phase-out of the use of glyphosate and glyphosate-containing products by January 31, 2024. During the phase-out period, Mexico's National Council of Science and Technology (CONACYT) is tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree would prohibit Mexico from using glyphosate in any government-sponsored programs during the phase-out period. Mexico's regulatory improvement agency, CONAMER, exempted Mexico's Secretariat of Agriculture and Rural Development (SADER) from conducting a regulatory impact analysis of the proposed decree.

The United States continues to press Mexico to grant import permits for glyphosate-containing products, emphasizing the importance of a science-based and risk-based regulatory approach.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Implementation of USMCA Technical Barriers to Trade Obligations

In 2020, Mexico enacted the Quality Infrastructure Law, replacing its Federal Law on Standardization and Metrology. The new law covered requirements for Mexico's standardization, conformity assessment, accreditation, metrology, technical regulations and post-market surveillance systems. The U.S. Government provided Mexico with several rounds of comments on the law, in order to emphasize the importance of Mexico complying with USMCA Technical Barriers to Trade (TBT) obligations. In 2021, Mexico is expected to publish a draft implementing regulation for this law. The United States intends to review and comment on the draft regulation.

Alcoholic Beverages

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, including ageing requirements, minimum and maximum limits for various components, alcohol content limits, and minimum spirit content requirements for certain labels. The U.S. 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, physicochemical 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 measure 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 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.

Front-of-Package Nutrition Labels

Mexico officially published its final FOPNL regulation on March 27, 2020, and began implementation on October 1, 2020. . The regulation requires the front panel of product labels to display up to five black stop-sign shaped symbols for products that exceed specified threshold levels of calories, sugars, saturated fats, trans fats, and sodium. The symbol must include the word stating "Excess" and the nutrient, as well as, "Ministry of Health" within the symbol. Products that contain a sweetener (natural or synthetic) must display the statement "'Contains sweeteners, not recommended for children," and those that include caffeine must display "Contains caffeine, to be avoided by children". Mexico allows stickers to be used until April 2021 for compliance with new FOPL requirements.

The United States provided comments on the final measure and raised it on the floor of the May 2020 and October 2020 TBT Committee meetings, and the July 2020 and November 2020 meetings of the Council for Trade in Goods. Mexico subsequently notified its final measure on July 10. In 2020, U.S. exports of processed products to Mexico, the second largest market for the United States after Canada, totaled $5.7 billion.

General Law on Health

On July 6, 2020, Mexico notified draft amendments to the Regulations on Sanitary Control Products and Services and Implementing Regulations to the General Law on Health with Respect to Advertising. These amendments contain additional details about the implementation of Mexico's FOPNL, including prohibitions on the use of voluntary fortification, stamps or legends of recommendation by organizations or professional organizations, or certain marketing and advertising if a product is required to display a front-of-package symbol or warning statement on sweeteners or caffeine. Pre-approval of marketing and advertising by Mexican authorities is required and products are not permitted to include images of characters, cartoons, or celebrities, or offer toys, gifts, offers, or contests on packaging, labels, or in advertisements of these products, on social media or other platforms. Promotional offers regarding price or content are also prohibited. The United States provided comments on the draft and raised concerns on the floor of the June 2020 and November 2020 TBT Committee meetings. The United States raised concerns over Mexico's amendment of its General Law on Health at the May 2020 and October 2020 WTO TBT Committee meetings and with Mexico's FOPNL measures at the November 2020 meeting of the Council for Trade in Goods. At the October 2020 TBT Committee meeting, Mexico provided assurance that products required to display a symbol or warning statement on sweeteners or caffeine may continue to be fortified with vitamins and minerals, however restrictions on marketing and advertising and the use of stamps or legends of recommendations are expected to remain in the published final measure.

Additive Requirements

In October 2020, COFEPRIS provided draft modifications on its labeling measures for comment to Mexican industry groups for caffeine and tagatose when used as food additives. The amendments are set to go into effect on April 1, 2021, as an annex to the Mexican Standard NOM-051 SCFI/SSA1-2010: "Labeling for prepackaged food and non-alcoholic beverages – Commercial and Health Information." The amendments set the maximum caffeine permitted for dairy products at 70 mg/kg and for other non-alcoholic beverages at 150 mg/L. The United States requested on November 6, 2020, that Mexico notify the amendments to the WTO, however, Mexico has declined to notify the amendments.

State Level Measures Prohibiting Sales to Minors

Twenty-five of Mexico's 32 states are considering measures that could prohibit the sale of packaged foods and non-alcoholic beverages to minors under the age of 18. The state registers in Oaxaca and Tabasco published notice of their adopted measures in August 2020. These measures define packaged foods and beverages as those products sold with added sugar, saturated fats, trans fats, and sodium exceeding nutrient thresholds, in accordance with the corresponding federal technical regulation, Official Mexican Standard: NOM-051 SCFI/SSA1-2010 "Labeling for prepackaged food and non-alcoholic beverages – Commercial and Health Information". The prohibition appears to apply broadly to all sales in markets, grocery and convenience stores, and schools. U.S. industry estimates that the measure will impact a large number of products including some common groceries such as cheese, bread, and some meats. The United States raised questions about Mexico's state-level measures at the October 2020 WTO TBT Committee and with Mexico's package of FOPNL measures at the November 2020 meeting of the Council for Trade in Goods. The United States has requested that Mexico notify these measures to the TBT Committee.

Conformity Assessment Requirements for Cheese

In 2020, Mexico published new conformity assessment requirements for cheese and notified them to the WTO for comment. The U.S. Government and industry provided comments on the WTO notification, expressing concern that the conformity assessment requirements did not provide national treatment and were more trade restrictive than necessary. The United States is still awaiting the publication of the final measure.

Information and Communications Technology Safety Requirements

On October 6, 2020, Mexico notified the WTO of its proposal to revise a 1998 technical regulation, NOM-019-SCFI-1998 "Data Processing Equipment Safety", that sets safety requirements for certain information and communications technology (ICT) products, including, *inter alia*, servers, data centers, and network devices. U.S. stakeholders have expressed concern that Mexico may no longer exempt many U.S. ICT exports from testing requirements and that Mexico would no longer recognize the results of conformity assessment procedures from the United States as meeting the requirements of the revised technical regulation, PROY-NOM-019-SE-2020 "Information Technology Equipment and Associated Equipment, and Equipment for Office Use-Safety Requirements." Industry estimates this change will cost them $77 million dollars and could negatively impact U.S. jobs.

Telecommunications and Broadcasting Equipment

In February 2020, Mexico's Federal Institute of Telecommunications (IFT) published a new conformity assessment procedure for the field of telecommunication and broadcasting (IFT-012-2019) that entered into force on February 21, 2021. The new procedure would require industry to share test reports that potentially contain confidential business information with regard to ICT products. In addition, these procedures would potentially require quadruple the number of samples for certification of potentially high cost equipment and no longer allow the transfer of conformity certifications to distributors. Furthermore, the new procedures do not specify which NOMs should be used to assess the conformity of the Internet of Things, such as connected devices that operate with Wi-Fi and Bluetooth. The United States has engaged with Mexico regarding concerns about the impact on U.S. stakeholders and to press for notification to the WTO.

Local Specific Absorption Testing Requirements

In February 2020, IFT published new guidelines pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates (SAR). As of March 2021, Mexico does not have any accredited facilities able to perform the required tests. In addition, the testing requirements refer to out-of-date standards instead of recent guidance from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers (IEC/IEEE) and the International Commission on Non-Ionizing Radiation Protection (ICNIRP). There also appears to be a lack of clarity about the applicability of the new SAR requirements on the existing products certified and placed on the market in Mexico, as of March 2021. These new requirements were not notified to the WTO. The United States has pressed Mexico to submit the required WTO notification and to use the latest testing standards (IEC/IEEE 62209-1528:2020) and the 2020 version of ICNIRP guidelines.

Withdrawal of Equivalency Agreement

In August 2010, Mexico established a unilateral equivalency resolution, the Equivalency Agreement, for a wide range of electronic products, whereby Mexico accepted certain certificates of compliance from U.S. and Canadian certification bodies that demonstrate products' conformity to safety requirements under

NOM-001-SCFI-1993. In 2018, Mexico revised NOM-001-SCFI-2018, effective in August 2020. With the revision of NOM-001-SCFI-1993, this acceptance ended, as Mexico did not update the Equivalency Agreement to reference the updated NOM. As a result, U.S. manufacturers of electronic products must undertake duplicative testing and certification in Mexico to access Mexico's market. The United States will continue to work with Mexico and its relevant regulators to encourage Mexico to re-instate the equivalency resolution for NOM-001-SCFI-2018.

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. 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, Mexico 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, SADER's predecessor agency (SAGARPA) agreed to finalize a revised pest risk assessment, which it published in December 2016. On August 4, 2017, and again in June 2018, a Mexican court issued another ruling to prohibit imports of U.S. potatoes beyond the 26-kilometer border zone. In late October 2018, the Supreme Court of Mexico agreed to address the appeal of the June 2018 ruling. The United States, 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

The United States is requesting market access to Mexico for peaches, nectarines, and plums from the Pacific Northwest (Idaho, Oregon, and Washington). On November 6, 2020, Mexico notified the United States that it had completed a pest risk assessment. Mexico also provided a revised pest list that the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service is reviewing. Mexico previously stated that on-site inspections would be necessary to mitigate oriental fruit moth. The United States continues to engage with Mexico to agree on the export requirements for stone fruit from Idaho, Oregon, and Washington to Mexico.

Biotechnology Products

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.

On December 31, 2020, Mexico published a final decree under which existing authorizations "for the use of genetically modified corn grain in the diet of Mexican women and men" will be revoked and new authorizations are prohibited until genetically modified corn grain is completely replaced by January 31, 2024.

The United States is pressing Mexico to revoke the decree and ensure COFEPRIS undertakes and completes its approval procedure for agricultural biotechnology products without undue delay while maintaining a transparent process.

Biotechnology Cotton

Mexico rejected applications for cultivation of biotechnology cotton in 2019 and 2020. Biotechnology cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider these applications and to use a science and risk-based approach.

GOVERNMENT PROCUREMENT

On December 1, 2018, Mexico announced plans to centralize almost all federal government procurement under the Secretariat of Finance, with the goal of curbing corruption, reducing bureaucratic inefficiencies, and achieving 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 were also exempted, on national security grounds. The Secretariat of Finance 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) either 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 direct awards for government contracts.

In August 2020, the Mexican Congress approved an amendment to Article 1 of Mexico's procurement law to allow direct procurement of pharmaceutical products and medical devices, including from international institutions such as UNOPS. In late 2020, Mexico began large procurements of medicines directly from UNOPS. The United States will continue to engage with Mexico to ensure that these procurements and all amendments to the law are in accordance with the USMCA procurement obligations.

Mexico is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. Mexico has obligations on government procurement under the USMCA.

INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the Special 301 Report. As described in that report, obstacles to U.S. trade in IP-intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and virtual markets. As broadband access increases, digital IP crimes have been at the forefront of IP violations. 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. In 2020, Mexico continued to reduce resources for numerous government agencies, further limiting Mexico's efforts to improve the environment for IP. The United States has identified the Tepito market in Mexico City, the San Juan de Dios market in Guadalajara, and the La Pulga Rio market in Monterrey in the Notorious Markets List for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in April 2018, Mexico and the European Union (EU) came to an agreement in principle on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the negotiation of 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 created a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In July 2020, Mexico enacted a new law for the protection of industrial property and amendments to the Federal Copyright Law and Federal Criminal Code intended to implement a variety of IP commitments under the USMCA, including provisions on enforcement against counterfeiting and piracy, protection of pharmaceutical-related IP, protection against circumvention of technological protection measures and rights management information, unauthorized camcording of movies, satellite and cable signal theft, and transparency with respect to new GIs. When these laws are fully implemented, these commitments should substantially improve the IP environment in Mexico and help to modernize Mexico's IP system. The United States continues to work closely with Mexico to make progress in addressing trade-related IP issues.

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. 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 in 2015 as consistent with Mexico's statutes. In February 2020, IFT published an opinion at odds with the 2015 court decision and long-standing practice. As IFT did not go through standard regulatory rulemaking, the intent and legal effect of the opinion is unclear, and it has created uncertainty in the market that disproportionately affects U.S. stakeholders. IFT should resolve this issue by affirming the legality of existing practices, consistent with the 2015 court decision.

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.

The United States is monitoring telecommunications and audiovisual reform legislation introduced in November 2019, which includes local content quotas, and related legislative initiatives, for consistency with the USMCA.

Electronic Payments Services

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework have the effect of limiting the ability of U.S. electronic payment service suppliers to fully utilize their proprietary networks and supply their complete suite of value-added services. The United States anticipates improvements to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with the Mexico's USMCA obligations.

On January 28, 2021, Mexico issued a final regulation on electronic payment fund institutions, which includes certain requirements relating to use of cloud service suppliers by electronic payment fund institutions. The United States will closely monitor implementation of this measure and continues to be concerned that the requirements relating to use of cloud service suppliers by electronic payment fund institutions may have a negative competitive impact on the business of U.S. service suppliers.

Telecommunications Services

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants must still compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a "preponderant economic agent" by IFT. On December 3, 2020, IFT announced the results of its biannual assessment of competition conditions and updated the asymmetric regulation for preponderant economic agents to address ongoing concerns with the traditional dominant supplier.

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. In addition, the local access company and the wholesale services division will be obligated to provide their services and infrastructure on a nondiscriminatory basis. Although the initial IFT order required that this restructuring be completed by the end of March 2020, IFT has suspended this deadline due to the COVID-19 pandemic. The United States encourages Mexico to reinstate, as soon as possible, an appropriate deadline for the full implementation of this IFT order, which is a key part of the reform of the telecommunications sector in Mexico.

BARRIERS TO DIGITAL TRADE

Digital Taxation

The Revenue Law for 2021 includes a "kill switch" provision, which gives the Mexican Government the authority to order Internet Service Providers (ISPs) in Mexico to block access in Mexico to electronically delivered services from non-resident service suppliers that are found out of compliance with Mexican VAT registration and other regulations. The United States urges Mexico to reconsider the adoption of such a disproportionate penalty and to work with U.S. suppliers to reform its complex VAT registration requirements, permitting, for example, fully electronic registration, which could obviate the need for action so disruptive to digital trade.

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. 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 increases progressively 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 increase gradually 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 minimum local content requirements for the exploration phase is 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 commercial arbitration to resolve certain types of disputes with the Mexican Government. For investors seeking to resolve such disputes, the only available forum is the Mexican court system. Under the USMCA, however, activities with respect to oil and natural gas that a national authority of Mexico controls are among the sectors in which U.S. investors may, on their own behalf, submit claims to arbitration regarding any obligation under the investment chapter.

The Mexican Government has suspended oil auctions and pressured private investors to "renegotiate" gas supply contracts, raising significant investor concern. Mexico has also restricted private sector involvement in the electricity sector by canceling the fourth long-term clean energy auction. Investors are increasingly concerned that Mexico is also weakening the political autonomy of independent regulators.

The Mexican Government is reported to have urged energy regulators to restore state control over the energy sector and prevent state-owned energy companies from losing market share to private companies. Throughout 2020, U.S. energy companies have complained of significant permitting delays, discriminatory enforcement of regulations, and lack of notice regarding regulatory and policy changes. The United States has raised concerns with Mexico regarding the deteriorating climate for U.S. energy investors in Mexico, emphasizing that the U.S. Government is committed to ensuring that U.S. investors are treated fairly and that Mexico adheres to its USMCA commitments.

Mexico's autonomous antitrust regulator, the Federal Commission on Economic Competition, submitted a "constitutional challenge" against the Mexican Government's May 2020 electricity policy, which seeks to favor the state-owned electric company CFE and to limit permits for private sector renewable projects, arguing that the policy bypassed the regulator's mandate to uphold a competitive electricity market. The Mexican Supreme Court issued a June 29, 2020, provisional ruling suspending implementation of the policy and, on October 21, 2020, reaffirmed the indefinite suspension.

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 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 $1.3 billion in 2020, a 34.6 percent decrease ($663 million) over 2019. U.S. goods exports to Morocco were $2.3 billion, down 34.3 percent ($1.2 billion) from the previous year. Corresponding U.S. imports from Morocco were $1.0 billion, down 33.8 percent. Morocco was the United States' 56th largest goods export market in 2020.

U.S. exports of services to Morocco were an estimated $768 million in 2019 and U.S. imports were $758 million. Sales of services in Morocco by majority U.S.-owned affiliates were $287 million in 2018 (latest data available), while sales of services in the United States by majority Morocco-owned firms were $29 million.

U.S. foreign direct investment in Morocco (stock) was $406 million in 2019, a 1.0 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006. Morocco immediately eliminated duties on 95 percent of industrial and consumer goods. Morocco implemented phased tariff reductions culminating in the complete elimination of duties on most other such goods by 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. The United States and Morocco meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Morocco Joint Committee is the central oversight body for the FTA.

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. In response to underperforming wheat exports, the United States has repeatedly pressed Morocco for reforms to its wheat tender system. In 2019, Morocco agreed to increase the frequency of Moroccan auctions and implemented a schedule that requires auctions when the tariff rate is changed.

In October 2017, 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 European Union (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.

Taxes

Under 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 continues to closely monitor Morocco's application of VAT to U.S. products.

Non-Tariff 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. Since then, Moroccan customs' interpretation of USMFTA rules of origin regarding certain consignments has continued to raise concerns that the commitment in the USMFTA to provide duty-free treatment is being undermined by imposing tariffs on goods that should receive duty-free treatment. The United States continues to engage with Moroccan officials to preserve market access for these products.

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 vehicle standards, effectively barring many automobiles produced in the United States from entering the Moroccan market. 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, some importers continue to report that they face uncertainty at the border and delays in release of their merchandise.

Sanitary and Phytosanitary Barriers

In October 2017, Morocco committed to finalize export certificates for U.S. beef and poultry products. 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 in wheat at levels consistent with Codex Alimentarius Commission standards. In January 2020, Morocco finalized a sanitary certificate for U.S. live cattle. The Moroccan Government continues to work through its pest risk assessment for seed potatoes, and to process registrations for new seed potato varieties. Additional work is needed to expand the list of eligible beef breed sires for bovine semen.

Biotechnology products have not been developed or commercialized for local production in Morocco, and imports of such products are not permitted for human consumption.

In 2019, Morocco suspended the issuance of import permits for U.S. garden strawberry plants unless they come from areas free of the bacterium *Xylella fastidiosa*. Morocco considers garden strawberry plants to be hosts for the bacterium; however, the United States is not aware of a scientific basis to support this claim. From 2011 to 2019, the United States exported nearly 4 million strawberry plants to Morocco without phytosanitary concerns.

SUBSIDIES

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 United States has raised these issues 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 World Trade Organization (WTO) Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat piracy and trade in counterfeit, Morocco continues to be a thriving market for illicit counterfeit products and faces challenges with digital piracy. Weak enforcement efforts have led to rising concerns from U.S. clothing manufacturers over the prevalence of counterfeit apparel, particularly sportswear.

In 2020, the United States and Morocco continued to engage 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 the adoption of 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 continues to reiterate to Morocco the importance of each GI being independently evaluated on its individual merits, 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.

SERVICES BARRIERS

Although Morocco's insurance regulations do 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.

OTHER BARRIERS

U.S. firms have cited irregularities in various government procedures as among the greatest obstacles to trade and investment in Morocco. In particular, U.S. companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. U.S. companies also have noted 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 continue to impede business.

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. These 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. Some U.S. exporters use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. exporters report payment delays. While Moroccan Government officials had indicated in 2019 that the 30 percent limit would be phased out over an indefinite timeline, it remained in effect in 2020. 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 $1.0 billion in 2020, a 509.6 percent increase ($846 million) over 2019. U.S. goods exports to New Zealand were $3.2 billion, down 19.0 percent ($752 million) from the previous year. Corresponding U.S. imports from New Zealand were $4.2 billion, up 2.3 percent. New Zealand was the United States' 47th largest goods export market in 2020.

U.S. exports of services to New Zealand were an estimated $3.2 billion in 2019 and U.S. imports were $2.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $4.0 billion in 2018 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were $445 million.

U.S. foreign direct investment in New Zealand (stock) was $12.0 billion in 2019, a 3.0 percent increase from 2018. U.S. direct investment in New Zealand is led by manufacturing, professional, scientific, and technical services, and wholesale trade.

TRADE AGREEMENTS

The United States–New Zealand Trade and Investment Framework Agreement

The United States and New Zealand signed a Trade and Investment Framework Agreement on October 2, 1992. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and New Zealand.

IMPORT POLICIES

Tariffs

New Zealand's average Most-Favored-Nation applied tariff rate was 2.0 percent in 2019 (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 2019 (latest data available). New Zealand has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 9.7 percent.

As of 2019, New Zealand applied 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 (IRD) and collect Goods and Services Tax (GST) at the point of sale. As of December 1, 2019, the registration requirement applies to non-resident suppliers of goods with sales to New Zealand customers that exceed or are expected to exceed NZ$60,000 (approximately $41,000) in a 12-month period. Non-resident suppliers must charge GST at the point of sale on goods bought by a New Zealand customer that is less than or equal to NZ$1,000 (approximately $687). 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 sales into New Zealand are valued at less than NZ$1,000. Prior to the 2019 law, online purchases by New Zealand customers of goods valued at more than NZ$400 (approximately $274) had GST and tariff duty collected at the border by Customs New Zealand. GST registration requires that non-resident companies provide two pieces of evidence to prove a customer is resident in New Zealand, such as their billing address or IP address, and requires that companies file a GST return every quarter.

SANITARY AND PHYTOSANITARY BARRIERS

Plant Health

In 2019, the Ministry of Primary Industries (MPI) placed a temporary ban on U.S. citrus imports after an isolated inspection issue. MPI and the U.S. Department of Agriculture (USDA) conducted negotiations for new import requirements for U.S. citrus and, on November 19, 2019, MPI announced an amendment to Import Health Standard 152. The amendment added additional clearance requirements and restored market access for U.S. citrus. In October 2020, USDA's Animal and Plant Health Inspection Service and MPI agreed to a new treatment program for U.S. navel oranges and other citrus species which increases the options for exporters in meeting the 2019 clearance requirements.

Animal Health

New Zealand maintains restrictions on imports of pork from the United States related to porcine respiratory and reproductive syndrome. Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing within New Zealand.

Industrial Goods

In August 2020, 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 to April 30. Under the new rules, MPI increased the number of "risk countries" requiring off-shore treatment of imported vehicles, machinery, and parts from 17 to 37 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. After consulting on an Issues Paper between November 2018 and April 2019 to seek public feedback on the efficacy of the current copyright regime, in November 2019, the Ministry of Business, Innovation, and Employment (MBIE) issued a second paper entitled "Review of the Copyright Act 1994: MBIE's approach to policy development" that amended the initial objectives of the review. However, in July 2020, the MBIE withdrew the paper to further consult the public on potential changes to the objectives. The United States continues to monitor the outcome of this review, including with respect to technological protection measures and copyright term.

The United States continues to monitor New Zealand's IP-related legislation, including implementation of the World Intellectual Property Organization Internet Treaties and proposed amendments to the Patents Act 2013, the Trade Marks Act 2002, and the Designs Act 1953. The United States also continues to monitor developments to amend the Medicines Act 1981 through the Therapeutic Products Bill. 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 Organization for Economic Cooperation and Development (OECD) but that it will consider a unilateral tax if the OECD cannot make sufficient progress. New Zealand has indicated that it may revisit introducing a unilateral digital services tax in 2021. The United States continues to monitor New Zealand's consideration of this matter.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

In June 2020, in response to the COVID-19 pandemic, the New Zealand Overseas Investment Office (OIO) implemented a temporary emergency notification regime (ENR) requiring notification of certain foreign investments in New Zealand businesses, including those not generally subject to screening under the New Zealand foreign direct investment regime. The OIO and ministers assess whether the transaction is contrary to the "national interest," a test that assesses risks to national security. The ENR will remain in place while the New Zealand economy is still affected by COVID-19. The New Zealand Government will review it every 90 days.

Upon expiry of the ENR, New Zealand is anticipated to introduce a "call-in power" for strategically important businesses (SIBs), which include critical infrastructure such as telecoms, ports, airports, and dual use/military related sensitive technology, as well as media. SIBs will be subject to investment screening irrespective of the investment size or the stake being acquired (with limited exceptions). For non-SIBs following the expiry of the ENR, New Zealand is anticipated to revert to screening 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 $69 million). This threshold is higher—NZ$200 million (approximately $137 million)—for non-government investors from countries that have entered into trade agreements with New Zealand. These investments, however, are still subject to the national interest test.

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.

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 $2.1 billion in 2020, a 4.4 percent decrease ($97 million) over 2019. U.S. goods exports to Nicaragua were $1.4 billion, down 13.5 percent ($222 million) from the previous year. Corresponding U.S. imports from Nicaragua were $3.6 billion, down 8.2 percent. Nicaragua was the United States' 64th largest goods export market in 2020.

U.S. exports of services to Nicaragua were an estimated $398 million in 2019 and U.S. imports were $465 million. Sales of services in Nicaragua by majority U.S.-owned affiliates were $409 million in 2018 (latest data available), while sales of services in the United States by majority Nicaragua-owned firms were $84 million.

U.S. foreign direct investment in Nicaragua (stock) was $82 million in 2019, a 40.6 percent decrease from 2018.

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) 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 United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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 less. 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 were in force through the end of December 2020.

Under the CAFTA–DR, as of January 1, 2015, U.S. originating consumer and industrial goods enter Nicaragua duty free. Textile and apparel goods that meet the Agreement's rules of origin also enter Nicaragua duty free and quota free. Starting in 2019, Nicaragua's Customs Authority (DGA) began systematically seeking proof of country of origin of products that had previously been established to originate in the United States, including through a comprehensive questionnaire to importers seeking detailed information about the products. Multiple businesses have reported that the requested information includes proprietary business data or trade secrets. Businesses have sought to make arrangements with DGA to establish proof of origin without publishing trade secrets in questionnaires, such as, through site visits to production plants and staff interviews. However, DGA has rejected those proposals and in multiple cases has initiated administrative processes to remove preferential treatment and also seek retroactive tariffs

for the time that the product was imported with preferential treatment. In multiple cases, DGA has also levied a separate fine that doubles the amount owed. Businesses complain that DGA arbitrarily questions the declared value of goods. Businesses that choose to contest DGA's reportedly inflated valuations face increased storage fees and supply chain delays, and so sometimes choose to pay tariffs and taxes on these higher values. Businesses contend that this behavior by DGA is intended to artificially inflate taxes assessed on businesses. They also allege that the Nicaraguan Tax Authority (DGI) inflates revenue by conducting audits and levying tax penalties and fines on local businesses that attorneys say have no basis in law. The judicial authorities may authorize arrest warrants and property seizures based on those tax actions. DGA's increased inspections and tax levies helped it increase its revenue by 16.7 percent year-on-year in the second quarter of 2020.

U.S. agricultural goods also have preferential access to the Nicaraguan market under the CAFTA–DR. In accordance with its obligations, Nicaragua eliminated its remaining tariff-rate quota on yellow corn and pork meat on January 1, 2020, and will eliminate its remaining tariffs on rice and chicken leg quarters by 2023, and on dairy products (cheese, butter, powder milk, and ice cream) by 2025. For certain agricultural products, 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. Nicaragua is required under the CAFTA–DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system, which the United States is carefully tracking to ensure the timely issuance of these permits.

Taxes

The Nicaraguan Government levies a selective consumption tax of 15 percent 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. Multiple importers report that customs officials simply triple the CIF value to provide a baseline for the tax, which businesses say far exceeds the actual purchase price. The selective consumption tax therefore may disadvantage foreign suppliers, because domestic products pay the tax only on the actual purchase price. Theoretically, businesses can seek a refund for any overpaid tax once the product is sold and the final purchase price established, but businesses have not reported successes in obtaining this refund, with some stating that seeking a refund has actually led to an audit resulting in additional taxes and penalties. Some businesses report abandoning the legal appeal process and paying 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 also based on the calculation of a presumed purchase price. The National Institute of Information and Development (INIDE) eventually provided a schedule of retail prices that is supposed to serve as a baseline for this tax, but businesses report customs authorities often do not use the schedule.

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 Nicaraguan Government also tripled income taxes on businesses with gross annual income exceeding $5 million. Value added tax collected at the border increased by 17.5 percent year-on-year in the second quarter of 2020, while domestic value added tax (on domestically produced goods) declined by 18.7 percent. When the Nicaraguan Government announced the reforms, it also announced it would revise the reforms within 90 days based on public comment. As of March 2021, the Nicaraguan Government had not announced any revisions.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Businesses report that Nicaraguan customs officials routinely delay customs inspections and levy arbitrary fines for minor paperwork issues such as typographical errors. These fines reportedly often represent up to three times the value of the shipment. Businesses also 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 concern 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 / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

U.S. 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).

Sanitary and Phytosanitary Barriers

The Nicaraguan Institute of Agricultural Protection and Health (IPSA) detained five containers of pork and chicken meat during the first half of 2020 due to alleged noncompliance with the Nicaragua Food Safety Standards for raw meats. However, IPSA incorrectly applied a different standard than the one set forth in the Central American Regulation of Microbiological Criteria of Processed Foods, which Nicaragua adopted. The United States Department of Agriculture's Foreign Agricultural Service (USDA/FAS) and Food Safety Inspection Service (USDA/FSIS), were able to resolve some of these cases and achieve the release of some detained shipments and continues to engage IPSA to ensure clarity and compliance with applicable protocols.

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 were found to have enriched corrupt officials of the Nicaraguan Government, and were blocked by operation of law following the January 28, 2019 U.S. designation of Petroleos de Venezuela, S.A., for sanctions. Albanisa's subsidiary, Banco Corporativo SA, was designated for sanctions on April 17, 2019. CARUNA, the savings and credit cooperative that held Albanisa funds, was designated for sanctions on October 9, 2020. 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 because members of the Ortega family had used it to enrichment themselves through non-competitive contracts with Nicaraguan Government institutions. Power plants owned by Albanisa receive the most generous guaranteed "installed capacity" payments from the government, which is paid regardless of whether the plants generate any electricity. In fact, two Albanisa plants still collect over $3 million per month, despite generating barely any electricity following sanctions.

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 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

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, these requirements are not always followed. Terms of Reference and technical specifications are frequently unclear. 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. However, the CAFTA–DR contains provisions 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 is 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 central government control of judicial and economic institutions 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 United States also continues to hear allegations that Nicaraguan 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 say they 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.

Foreign Agents Law

On October 19, 2020, the Nicaraguan Government approved the Law on the Regulation of Foreign Agents (RFA). The RFA requires foreign agents to register with the Nicaraguan Government and file reports on all funds and donations received from foreign entities and how they are used. The RFA also prevents agents from "intervening … in affairs related to internal or external politics" or running for public office. The law defines "foreign agents" as any person who: "… performs or works as an agent, representative, employee, service provider or any other activity subject to the orders, requirement, instruction, direction, supervision, control from a foreign entity or, from an individual or legal entity whose activities are, directly or indirectly, supervised, directed, controlled, financed or subsidized, in whole or in part, by foreign individuals, Governments, capital, businesses or funds, directly or through a third party, be it an individual or legal entities."

The RFA specifically applies to public relations and marketing professionals, and "[g]overnments, foundations, businesses, corporations or associations, who…receive…or disburse funds… or in the interest of foreign individuals and…businesses or organizations." While the RFA also exempts certain categories, including organizations solely involved in commerce, legal experts expressed concern that the RFA is written so broadly that the government could apply it to any entity.

OTHER BARRIERS

Medication Pricing

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

U.S. stakeholder have expressed concerns that corruption in the Nicaraguan Government, including in the judiciary, continues to constrain successful investment in Nicaragua. Administrative and judicial decision-

making is widely believed to be inconsistent, nontransparent, and 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. In 2020, independent media published various reports of courts improperly issuing arrest and seizure warrants based on reportedly groundless government tax actions, including against press outlets that have been critical of the government. 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.

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 that government officials significantly delay issuance of residency permits, as a means to elicit bribes, requiring frequent travel out of the country for investors to renew visas. U.S. traders have reported cases 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.

In addition to tax-related seizures, multiple companies and individuals have reported attempts by others to seize or occupy their land. These reports assert that government institutions such as police, the court system, and attorney general's office, have either been nonresponsive to attempts to seek redress or actively assisted the seizures. Nicaragua is a member of the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

NIGERIA

TRADE SUMMARY

The U.S. trade balance with Nigeria shifted from a goods trade deficit of $1.4 billion in 2019 to a goods trade surplus of $1.3 billion in 2020. U.S. goods exports to Nigeria were $2.8 billion, down 12.9 percent ($411 million) from the previous year. Corresponding U.S. imports from Nigeria were $1.5 billion, down 67.8 percent. Nigeria was the United States' 53rd largest goods export market in 2020.

U.S. exports of services to Nigeria were an estimated $2.1 billion in 2019 and U.S. imports were $464 million. Sales of services in Nigeria by majority U.S.-owned affiliates were $1.0 billion in 2018 (latest data available), while sales of services in the United States by majority Nigeria-owned firms were $7 million.

U.S. foreign direct investment (FDI) in Nigeria (stock) was $5.5 billion in 2019, a 21.5 percent increase from 2018. There is no information on the distribution of U.S. FDI in Nigeria.

IMPORT POLICIES

Tariffs

Nigeria's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2019 (latest data available). Nigeria's average MFN applied tariff rate was 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2019 (latest data available). Nigeria has bound 20.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 120.9 percent.

Consistent with the Economic Community of West African States (ECOWAS) common external tariff (CET), Nigeria applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 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 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. Despite the NAIDP, Nigeria's automobile industry production capacity remains significantly lower than Nigeria's projection.

Non-Tariff Barriers

Nigeria uses non-tariff 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 February 2020, the CBN implemented a ban on foreign exchange for milk and dairy products without clarifying guidance regarding implementation. In July 2020, the CBN added maize to the foreign exchange restriction list. The United States has repeatedly raised concerns regarding the foreign exchange restrictions both bilaterally and in the WTO.

Quantitative Restrictions and Import Bans

In 2014, Nigeria introduced a frozen fish import quota regime that was expected to significantly reduce total fish imports. The government also banned imports of catfish and tilapia species as part of the quota system. The ban does not appear to cover Pacific Hake (*Merluccius productus)*, 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.

Nigeria 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 repellant coils; sanitary plastic wares; paper board; telephone recharge cards and vouchers; textiles, apparel, footwear, travel goods; used motor vehicles more than 10 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 among 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. The customs authority has attempted to automate its processes, but many basic customs procedures are still paper-based and require an unreasonably long to time to complete.

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 an effort to stop smuggling and boost domestic production, in August 2019, the Nigerian Government began closing all of the country's land borders to trade. These border closures, which the Nigerian Government began easing in December 2020, have caused further congestion at seaports. (*For further information, see the Other Barriers section.*)

Local Content Requirements

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. It is frequently not feasible for companies to comply with the Guidelines, and the Nigerian Government appears to not be enforcing them as it lacks the capacity and resources to monitor hiring practices, technological compliance, and data flows. The United States has encouraged Nigeria to review its Guidelines and to avoid such restrictive policies.

The Nigerian 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 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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling

In 2020, Nigeria held a domestic consultation regarding its proposed measure on "Formulated Caffeinated Beverage (Labelling) Regulations." The proposed measure has not been notified to the World Trade Organization (WTO). This measure proposes caffeine levels and warning statements for "caffeinated" beverages. On October 30, 2020, the United States submitted comments and requested Nigeria to notify this measure to the WTO Committee on Technical Barriers to Trade. The United States will continue to urge Nigeria to notify this and any future measures that could impact trade to the WTO.

Transparency

Transparency of the regulatory system in Nigeria is a concern, as U.S. companies complain that regulations are issued only as final measures without a clear process or period for public comment on draft regulations. Nigeria has not consistently notified draft technical regulations to the WTO Committee on Technical Barriers to Trade.

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 processed 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.

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 $6,500). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million ($6,500), and up to ₦100 million ($260,000) for goods and up to ₦1 billion ($2.6 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Nigerian 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.

Executive Order 5 of 2018 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.

Nigeria 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 in connection with 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. Nigeria has not yet amended its national laws to implement the treaties. In 2019, the President signed into law the Federal Competition and Consumer Protection Act which, among other things, contains provisions designed to combat trademark counterfeiting. However, pirated and counterfeit goods remain widely available in Nigeria and often threaten the health and safety of consumers. Counterfeit pharmaceuticals, automotive parts, software, music and video recordings, and other consumer goods are prevalent. Also, IP enforcement remains inadequate due to chronically insufficient resources for enforcement agencies, porous borders, entrenched trafficking systems that make enforcement difficult, and corruption. Public awareness is low regarding the importance of IP as a key driver of Nigeria's economic diversification and of its attractiveness as an investment destination.

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 noted above 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

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.

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.

OTHER BARRIERS

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 among the most expensive ports 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 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

The highly trade restrictive Oil and Gas Content Development Act (the Act) of 2010 has 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 continues to adversely affect a diverse range of companies, including operators, contractors, subcontractors, and service suppliers. Majority foreign-owned companies continue to observe 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 $1.2 billion in 2020, a 55.6 percent decrease ($1.5 billion) over 2019. U.S. goods exports to Norway were $2.8 billion, down 28.3 percent ($1.1 billion) from the previous year. Corresponding U.S. imports from Norway were $4.0 billion, down 39.3 percent. Norway was the United States' 52nd largest goods export market in 2020.

U.S. exports of services to Norway were an estimated $3.0 billion in 2019 and U.S. imports were $2.5 billion. Sales of services in Norway by majority U.S.-owned affiliates were $6.0 billion in 2018 (latest data available), while sales of services in the United States by majority Norway-owned firms were $2.6 billion.

U.S. foreign direct investment in Norway (stock) was $25.6 billion in 2019, a 2.3 percent decrease from 2018. U.S. direct investment in Norway is led by nonbank holding companies, mining, and information services.

TRADE AGREEMENTS

Norway as a member of the European Free Trade Association (EFTA) participates in the European Union (EU) single market through the European Economic Area (EEA) Accord. As an EEA Accord signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway has implemented or is in the process of implementing most EU trade policies and regulations. 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 percent in 2019 (latest data available). Norway's average MFN applied tariff rate was 40.4 percent for agricultural products and 0.4 percent for non-agricultural products in 2019. Norway has bound 100 percent of its tariff lines in the WTO, with an average World Trade Organization (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 Accord that results in Norway applying a preferential duty on European Union (EU) processed food products. The special agreement provides preferential access for EU suppliers for 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.

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.

Non-Tariff Barriers

Agricultural Support

Although agriculture accounts for only 0.5 percent of Norway's gross domestic product, support provided by Norway to its agricultural producers was 59 percent of total farm receipts between 2016 and 2019 (latest data available), 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 light of its commitments from the 2015 Nairobi Ministerial Conference, Norway adopted legislation to phase out agricultural export subsidies by the end of 2020. The United States is monitoring the phase out.

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

Under the EEA Accord, Norway applies certain EU sanitary and phytosanitary (SPS) regulations, with the exception of regulations relating to plant health.

Agricultural Biotechnology

Norway has implemented extremely restrictive policies for crops derived from agricultural biotechnology, with limited exceptions. 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. Tenders in Norway can be unpredictable and non-transparent, and companies would like more direct communication with the body responsible for final procurement decisions on behalf of regional health authorities (the Norwegian Decision Forum).

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 online 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. 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 $316 million in 2020, a 59.3 percent decrease ($461 million) over 2019. U.S. goods exports to Oman were $1.1 billion, down 41.5 percent ($804 million) from the previous year. Corresponding U.S. imports from Oman were $817 million, down 29.6 percent. Oman was the United States' 71st largest goods export market in 2020.

U.S. exports of services to Oman were an estimated $571 million in 2019 and U.S. imports were $173 million. Sales of services in Oman by majority U.S.-owned affiliates were $502 million in 2018 (latest data available). There were no sales of services in the United States by majority Oman-owned firms in 2018.

U.S. foreign direct investment in Oman (stock) was $1.6 billion in 2018 (latest data available).

TRADE AGREEMENTS

The United States–Oman Free Trade Agreement

The United States–Oman FTA entered into force on January 1, 2009. Under this agreement, as of January 1, 2019, Oman provides duty-free access to all U.S. exports. The United States and Oman meet to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

In 2016, the Gulf Cooperation Council (GCC) Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). Oman implemented the tax on June 15, 2019 and expanded the excise taxes to include "special purpose goods" – pork (100 percent) and alcohol (100 percent). Oman revised the alcohol excise tax to 50 percent within days for a temporary period, until July 1, 2020, when the excise tax reverted to 100 percent. Oman expanded the excise tax to sugar sweetened drinks (50 percent) on October 1, 2020. U.S. beverage producers report that the current tax structure, which also applies to sugar-free carbonated beverages, 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 2016, GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent. Oman published the VAT Law in October 2020 and will implement the VAT in April 2021.

Non-Tariff Barriers

Import Licensing

Companies that import goods into Oman must register with the Ministry of Commerce, Industry, and Investment Promotion. 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 small quantities of goods for personal consumption, such as clothing and cosmetics, does 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. The Royal Oman Police Customs Directorate sometimes applies requirements for origin-marking, segregation, and other documentation inconsistently.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Regulations

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO Committee on Technical Barriers to Trade in October 2020.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that 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 Oman's import requirements 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 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 bids 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 Oman's electronic tendering platform, Tender Board. Some U.S. companies report that award decisions are delayed, sometimes for years, or that the tendering is reopened with modified specifications and short deadlines.

Oman is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2001. In accordance with the commitment in its WTO accession, Oman began negotiations to accede to the WTO GPA in 2001, but it has not completed the accession process.

INTELLECTUAL PROPERTY 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 faced difficulty getting the responsible government agencies to take enforcement action. The Ministry of Commerce, Industry and Investment Promotion established an IP enforcement group in 2019 as provided for in the GCC Trademark Law of 2019. However, this IP enforcement group is not yet active. Law firms in Oman point to continued confusion about which agency is responsible for investigating different types of IP violations and a lack of transparent procedures for those investigations.

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. As of January 2021, non-Omani attorneys are not allowed to appear or plead in higher courts in Oman.

Financial Services

Oman does not permit representative banking offices or offshore banking.

BARRIERS TO DIGITAL TRADE

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 certain governorates and areas that the government deems necessary to restrict under Royal Decree 29/2018. In 2020, Oman extended the deadline for the sale and handover of land and real estate owned by non-Omanis in prohibited areas until October 31, 2021. 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.

In October 2020, Oman's Ministry of Housing and Urban Planning issued a decision granting non-Omanis usufruct rights (*i.e.*, the right to lease one's property to another person) for the purchase of units in multi-storied commercial and residential buildings in certain areas of the Muscat Governorate, with certain restrictions. The restrictions include that the percentage of units sold to expatriates should not exceed 40 percent of the total number of units in a multi-story commercial or residential building; that members of any particular nationality should not acquire more than 20 percent of units sold to expatriates; and, that any foreign buyer must have been a resident of Oman for over two years at the time of application. U.S. investors are also 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 $975 million in 2020, a 23.5 percent decrease ($299 million) over 2019. U.S. goods exports to Pakistan were $2.9 billion, up 10.5 percent ($278 million) from the previous year. Corresponding U.S. imports from Pakistan were $3.9 billion, down 0.5 percent. Pakistan was the United States' 50th largest goods export market in 2020.

U.S. foreign direct investment in Pakistan (stock) was $256 million in 2019, a 73.0 percent increase from 2018.

TRADE AGREEMENTS

United States–Pakistan Trade and Investment Framework Agreement

The United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) in June 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Pakistan.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Pakistan's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2019 (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 2019 (latest data available). Pakistan has bound 98.7 percent of its tariff lines in the World Trade Organization (WTO), with an 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 7 to 4, 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 20 percent. However, there are higher tariffs on beverages (90 percent) and transport equipment (30 and 50 percent on different tariff lines). Since 2017, Pakistan has gradually reduced tariff lines. In the Fiscal Year (FY) 2021 budget (July 1, 2020 – June 30, 2021), Pakistan lowered tariffs on more than 1800 product lines. The reductions focused primarily on raw materials and intermediate goods.

Despite the reduction in tariff categories and tariff rates since 2013, concerns exist that Pakistan may be protecting several local industries, such as automobiles and finished goods, by imposing high tariff rates and, in some cases, additional customs and regulatory duties. Included in the FY 2021 budget that went into effect on July 1, Pakistan continued additional customs duties of 4 percent and 7 percent on applied tariff categories of 16 percent and 20 percent respectively, focused primarily on finished goods.

Additionally, Pakistan imposes a higher tariff rate (35 percent) on imports of automotive parts that compete with domestically manufactured products than on imports of automotive 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 offered 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 2019, Pakistan eliminated incentives for new entrants, and firms such as Hyundai and Kia, which had entered the market in 2017 and 2018 respectively, were not able to take advantage of those incentives. As a result, other foreign manufacturers that had expressed interest in Pakistan's automotive market backed away, with no new foreign manufacturer entering the market since Kia in 2018.

Pakistan approved its first electric vehicle (EV) policy in June 2020. The approved policy offers lower tax rates and customs duties on electric vehicles and charging equipment – a 1 percent goods and services tax (GST) is applied to electric vehicles as compared to 17 percent GST on non-electric vehicles, with only 1 percent custom duty applied on charging equipment. International firms have taken notice of the new EV incentives offered through the policy. Ruba Group Lahore and MG Group UK (Morris Garages) launched MG Electric Cars in Pakistan in 2020. In addition, Sazgar Motors announced a collaboration with Beijing Automotive Industry Holding Co., or "BAIC Group" (a Chinese state-owned enterprise), to manufacture electric vehicles.

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 nor time to allow for implementation and compliance by importers. A list of SROs along with other trade policy and regulatory documents is available from Pakistan's Federal Board of Revenue (FBR).

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, resort to SROs continues, 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 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 has been limited, a number of U.S. companies have raised concerns about duty increases on inputs included in the SRO that would raise production costs and the price of finished goods manufactured in Pakistan.

Concerns exist regarding Pakistan's potential efforts to protect 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 pledged since 2015 to increase the GST on domestically produced products to 17 percent, but as yet no change has been made in this regard.

Customs, Regulatory Duty Waivers

On September 23, 2020, the ECC of the Pakistani Cabinet on the recommendations of Ministry of Commerce (MOC), approved a proposal to withdraw customs duties and regulatory duties, as well as additional customs duty, on a total of 163 tariff lines – mostly concerning raw materials for textiles including cotton for yarn and fabric.

Non-Tariff Barriers

All importers must have a National Tax Number 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 membership in a sanctioned chamber of commerce and industry or relevant Pakistani trade association.

Import Restrictions

Pakistan permits the importation 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 imports 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 designed to limit the supply of products into the country.

Import Licensing

Pakistan does not require import licenses, except for sensitive goods. The MOC makes available the list of goods for which licenses are required online.

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 negatively 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 can pose 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 said customs officials have the discretion to impose penalties, while recognizing the variety in invoicing systems from different companies. While Pakistan has shown openness to addressing the issue and U.S. authorities have worked with the FBR to that end, the rules remain formally in place, meaning that customs officials can exercise 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.

Taxes

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.

In April 2018, the MOF announced a plan to reduce the corporate tax rate from 30 percent to 25 percent by 2023. Pakistan reduced the corporate tax rate by 1 percent to 29 percent for fiscal year (FY) 2019 but did not reduce the rate further for FY 2020 nor FY 2021.

Pakistan has one of the lowest tax-to-Gross Domestic Product ratios in the world, approximately 9.5 percent in 2020. 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 Report notes that companies pay 34 different taxes (a reduction of 13 taxes from 47 in the previous year), compared to an average of 26.7 taxes in other South Asian countries. In addition, companies frequently lament the lack of transparency in the assessment of taxes.

Improving tax collection is a key focus of the IMF's Extended Fund Facility (EFF) program for Pakistan, agreed in July 2019. As part of the IMF program, Pakistan was supposed to increase its tax revenues to PKRs 5.5 trillion (approximately $33.3 billion) in FY 2020. However, Pakistan was only able to collect PKR 3.92 trillion ($23.8 billion) in FY 2020. Although Pakistan is taking steps to broaden the country's tax base, the government has continued to rely 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 repeatedly 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 4 percent for banking companies and 3 percent for non-banking companies with income exceeding PKR 500 million (approximately $3.0 million). The U.S. Government and industry have expressed concerns about the super tax. In April 2018, the MOF announced the government would reduce the super tax by 1 percentage point every year until eliminating it for non-bank companies in 2020 and for banks in 2021. The government carried out the first step in this process by reducing the tax by 1 percent for both banks and non-banks in the September 2019 mini-budget. However, neither the FY 2020, nor FY 2021 budgets contain any further reduction.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pakistan's food packaging requirements normally follow Codex Alimentarius Commission standards. Pakistan generally accepts packaging material if allowed in the exporting country. A notable exception, however, is food packaging for 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 food product labels, requiring information on ingredients as well as usage and expiration dates in Urdu and English via SRO 237. The new requirements

in 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, even on an interim basis. SRO 237 requires all products to have 50 percent shelf-life remaining from the date of filing of the Import General Manifest (IGM), and 66 percent shelf-life remaining from the date of manufacture.

Sanitary and Phytosanitary Barriers

Pakistan has not fully recognized the United States' negligible risk status for bovine spongiform encephalopathy (BSE). In 2013, the United States received a negligible risk status for BSE in accordance with World Animal Health Organization (OIE) guidelines. In February 2015, Pakistan established import requirements for the import of live cattle from the United States. On March 2, 2016, more than 300 Holstein heifers arrived in Punjab Province from the United States, representing the first such shipment since 1999. Since then, Pakistan has imported additional shipments of U.S. live cattle, with the latest shipment (1765 head) in November, 2019. However, Pakistan continues to impose cattle age and origin requirements for U.S. beef and beef products, ostensibly over BSE concerns, despite OIE's consideration of these factors in its negligible risk status determination. The United States continues to work with the MOC 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, but 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 plants, animals, microorganisms, and cells. As of September 2020, 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 (GE) 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. In October 2020, the Ministry of Climate Change established a sub-committee to formulate policy and procedure to regulate or ban the import of GE grains for food, feed, and processing. The work of this sub-committee is on-going.

SUBSIDIES

Export oriented industries, such as the textile, leather, surgical instrument, sporting goods, and carpet industries, had enjoyed exemptions from import duties as well as domestic taxation for decades. The current government abolished this regime for these industries in July 2019. However, to please influential business interests, the Government of Pakistan announced in March 2020 a PKR 20 billion (approximately $125 million) subsidy package for payment of energy tariffs to benefit export-oriented industries.

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.*)

Since 2014, Pakistan has relied 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 used a 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 in an effort to negotiate lower prices from U.S. and European Union companies, thereby procuring higher quality goods at lower, and in some cases, below-market pricing.

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 Watch List in the Special 301 Report. Intellectual property (IP) concerns in Pakistan were raised in June and December 2020 during TIFA intersessional meetings involving representatives of the U.S. and Pakistani Governments.

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 IP issues, including with respect to: (1) U.S.-Pakistan bilateral engagement, especially under the U.S.-Pakistan TIFA; (2) the establishment of IP tribunals; (3) public awareness campaigns on IP protection and enforcement; (4) IPO participation with the U.S. Patent and Trademark Office in a series of video conferences devoted to reviewing IP legislation; and, (5) ongoing engagement with stakeholders.

Despite these improvements, as the Special 301 Report noted, Pakistan must do significantly more to improve IP protection and enforcement. For example, with respect to the establishment of IP tribunals, litigants with experience in these courts have raised concerns over the lack of capacity, consistency, and insufficient penalties assessed by tribunal judges. Pakistan's ongoing but unfinished efforts to align its patent, trademark, and copyright laws, and IP 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 customs enforcement, as well as 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 State Bank of Pakistan (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, but the remainder of reinsurance must be ceded locally.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization

As of January 2021, Pakistan was finalizing legislation called the "Personal Data Protection Bill." Draft versions of the bill included a requirement to store all personal data on servers within the territory of Pakistan and a prohibition on the cross-border transfer of "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 would significantly increase costs for U.S. firms, potentially deterring market entry.

Internet Services

In November 2020, Pakistan adopted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguards) Rules. The Rules apply to the remove and/or blocking of online content that is deemed unlawful on any information system. Industry has indicated that the scope of the final Rules is unclear and may be interpreted to apply to any information technology company operating in Pakistan. When a draft of the rules was released, U.S. industry expressed concerns regarding provisions that would pose significant barriers to operating in Pakistan, including burdensome registration and licensing requirements, content restrictions, requirements that companies maintain a physical presence in Pakistan, and possible data localization requirements. Responding to concerns raised by U.S. companies and others, Pakistani authorities pledged in February 2020 to consult with relevant stakeholders. The Ministry of Information Technology and Telecommunication and the Pakistan Telecommunications Authority (PTA) consulted with foreign companies and other stakeholders, but they did not circulate a revised version of the rules for feedback before sending it to Pakistani Cabinet. The rules were approved by the Pakistani Cabinet and finalized in November 2020.

Pakistan periodically blocks access to Internet services for hosting content deemed to be "blasphemous" or "immoral" or on grounds that such services can be used to "undermine national security." In September 2020, PTA blocked five "dating" websites, including a U.S. company, citing alleged circulation of "immoral" content. PTA has also sent notices to U.S. based social media platforms, threatening adverse action if those platforms did not remove objectionable content. Throughout 2020, Pakistan has partially suspended access to mobile data and certain online services in major cities several times. However, Pakistan has recently refrained from blocking online services for the entire country, as it did 11 times in 2018. Such blockages undermine the value of Internet services and impose costs on local firms that depend on such services.

Pakistan is considering adoption of an E-commerce Policy Framework. In January 2020, the government made the draft available for public comment. U.S. industry expressed concerns regarding some aspects of the Framework, such as customs duties on digital goods imported into Pakistan, the requirement to disclose the facility where data is stored, the obligation for businesses to maintain a physical address in Pakistan, and the restriction on payments to unauthorized or unregistered sites and apps.

INVESTMENT BARRIERS

Pakistan generally permits foreign investment, with equity caps in key sectors including agriculture, aviation, banking, defense, media, insurance, and railways. In an effort to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of $100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the next 5 years.

Foreign investors are allowed to invest in all sectors except sectors related to the production of 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 $1.8 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 5 percent of net sales for five years. Royalties and technical payments are subject to a 15 percent income tax and subject to remittance restrictions listed in Chapter 14, section 12 of the SBP Foreign Exchange Manual. The tourism, housing, construction, and information and communications technology sectors have been granted "industry status," making them eligible for lower tax and utility rates compared to "commercial sector" enterprises, including banks and insurance companies.

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. For example, a U.S. financial services provider has been seeking to repatriate assets from the sale of a local subsidiary for more than five years. Despite repeated assurances from the Ministry of Finance (MOF) and other senior officials, the funds had not been allowed to be remitted by the Pakistani bank at which they are held as of September 2020.

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 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. The country's federal anticorruption agency, the National Accountability Bureau (NAB), was

established under President Musharraf in 1999. However, the 18th Amendment to the Constitution declares all acts and laws made by the President, implicitly including creation of the NAB, 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 and its operations are politically controversial in Pakistan.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $5.1 billion in 2020, a 28.4 percent decrease ($2.0 billion) over 2019. U.S. goods exports to Panama were $5.8 billion, down 23.4 percent ($1.8 billion) from the previous year. Corresponding U.S. imports from Panama were $694 million, up 53.6 percent. Panama was the United States' 36th largest goods export market in 2020.

U.S. exports of services to Panama were an estimated $2.4 billion in 2019 and U.S. imports were $2.7 billion. Sales of services in Panama by majority U.S.-owned affiliates were $1.5 billion in 2018 (latest data available). There were no sales of services in the United States by majority Panama-owned firms in 2018.

U.S. foreign direct investment in Panama (stock) was $5.3 billion in 2019, a 3.9 percent increase from 2018. U.S. direct investment in Panama is led by nonbank holding companies, wholesale trade, and finance and insurance.

TRADE AGREEMENTS

The United States–Panama Trade Promotion Agreement

The United States–Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. The United States and Panama continue to work closely together to review the implementation and functioning of the Agreement and to address outstanding issues.

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 have occurred on January 1 of each year. The tenth round of tariff reductions took place on January 1, 2021. All U.S. consumer and industrial products are duty free as of January 1, 2021. Currently remaining duties on some agricultural goods will be phased out within 12 years following the entry into force of the TPA (2023), with duties on the most sensitive products phased out over 15 years to 20 years (2026-2031). The TPA created expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas (TRQs), which provided immediate duty-free access for specific quantities of certain agricultural products.

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.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Since 2017, the United States has raised concerns with Panama's minimum quality requirements for fresh onions, notified to the World Trade Organization (WTO), and minimum quality requirements for fresh potatoes. The two measures establish mandatory harvest date requirements, sprouting limits, and temperature and storage criteria, raising concerns regarding their scientific basis, consistency with international standards, and burden on trade. The United States raised the issue in the October 2020 and the February 2021 WTO Committee on Technical Barriers to Trade meeting because U.S. concerns for the measure have been unaddressed and U.S. onion producers have been negatively affected. In January 2021, Panama announced it would delay implementation of the potato regulation for an additional six months. The United States will continue to raise concerns regarding these regulations.

On January 22, 2020, draft bill 265 was presented in Panama's National Assembly to establish a front-of-package nutritional warning labeling scheme modeled after the Mexican example, which includes octagonal stop sign-shaped labels for non-caloric sweeteners, caffeine, sodium, fats, and sugars. The scheme's stated objective is to help reduce obesity and diet-related non-communicable diseases. The draft bill is pending its first hearing in the Committee on Labor and Public Health and will be discussed the first quarter of 2021. The United States will continue to monitor the draft bill and engage with the Panamanian Government.

Sanitary and Phytosanitary Barriers

On October 28, 2019, Panama's Cabinet Council approved a draft bill to eliminate the Panamanian Food Safety Authority (AUPSA), the Panamanian Government agency responsible for issuing science-based sanitary and phytosanitary import policies for agricultural and food products. The AUPSA does not have regulatory authority over domestically produced products, but the prospective new entity that could replace AUPSA would likely have responsibility over both imports and exports. The United States will continue to monitor this issue to ensure that U.S. products are treated appropriately, in accordance with Panama's international commitments.

Shipments of onions must be accompanied by a negative laboratory test result for the nematode *Ditylenchus dipsaci*, although Panama has not provided a science-based rationale for this requirement. The United States will continue to monitor whether Panama notifies the measure to the WTO Committee on Sanitary and Phytosanitary Measures.

Starting on August 12, 2020, AUPSA began implementing Ministry of Health Decree 255, which requires registration of establishments involved in the storage, display, distribution, and sale of raw meat and raw meat products, which may affect U.S. beef, pork, and poultry exports that supply the hotel, restaurant, and institutional market, as well as products destined for supermarkets to be repackaged for retail sale. These products were previously only subject to routine AUPSA registration, a process that could be completed in 24 hours. The process now takes 180 days.

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. However, the TPA contains disciplines on government procurement.

Historically, government procurement procedures have presented barriers to trade in Panama. The Cortizo administration has publicly committed to ensuring greater transparency in the award of government tenders.

In May 2020, Law 153 was signed into law, providing greater transparency in public procurement by mandating the use of an electronic-procurement system for all public entities.

INTELLECTUAL PROPERTY PROTECTION

In 2012, Panama updated its legislative framework to implement the requirements of the TPA, which called for improved standards for the protection and enforcement of a broad range of intellectual property rights (IPR). These include 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. An interagency committee, which is led by the Panama Customs Authority and includes the Ministry of Commerce and Industry, the Ministry of Economy and Finance, the District Attorney for IPR, and the Ministry of Health, have held discussions on providing for pre-established damages. The committee last met in April 2020 to discuss customs-related fines. 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.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is generally receptive to foreign investment, but U.S. investors and individual property holders have raised concerns about a weak judiciary, property disputes and land titles. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate administration of real property. Although Panama enacted Law 80 in 2009, which 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

U.S. stakeholders report that corruption continues to be a systemic challenge in Panama at all levels of government, including in the judicial system. Allegations of corruption surrounded purchases made during Panama's State of Emergency due to the COVID-19 pandemic, when procurement procedures were abbreviated to permit rapid responses.

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 $1.1 billion in 2020, a 42.2 percent decrease ($821 million) over 2019. U.S. goods exports to Paraguay were $1.3 billion, down 39.5 percent ($834 million) from the previous year. Corresponding U.S. imports from Paraguay were $150 million, down 7.5 percent. Paraguay was the United States' 69th largest goods export market in 2020.

U.S. foreign direct investment in Paraguay (stock) was $45 million in 2019, a 72.4 percent decrease from 2018.

TRADE AGREEMENTS

The United States and Paraguay signed a Trade and Investment Framework Agreement (TIFA) on January 13, 2017. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Paraguay.

IMPORT POLICIES

Tariffs

Paraguay's average Most-Favored-Nation (MFN) applied tariff rate was 9.8 percent in 2019 (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 2019 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 33.5 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 that also comprises Argentina, Brazil, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 12.5 percent.

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Paraguay was permitted to maintain a list of 649 exceptions to the CET until December 31, 2023. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR website.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country. Thus, for any U.S. good imported into landlocked Paraguay via any other MERCOSUR country, all of which have ocean ports, the CET is effectively doubled.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a 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 March 2021, only Argentina had done so.

Non-Tariff 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 84 instances that the law banning used automobiles was unconstitutional, and allowed the 84 importers that 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, wheat flour, yerba mate, beef, chicken, alkaline batteries, cell phones (including spare parts and accessories), fire extinguishers, barbed wire, wire rods, cement, and steel and iron bars. Licensing is non-automatic or automatic, depending on the product, and in both cases require 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 health certification process can take up to 60 days. Once a health certification is issued, it is valid for five years. The import license process usually takes 24 hours to 48 hours, but can take up to 10 days in some cases. For goods that require a health certification, it can take up to 30 days. Some U.S. companies have reported license issuance delays of up to 12 months. Once issued, the import license 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.

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 either through Paraguay's single window system or at a Paraguayan consulate in the country of origin. Those 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 allows government institutions at the national and local levels to procure directly from vendors of their choosing via the National Directorate for Public Contracts if the stipulated contract value is less than approximately $24,000 and the institution has received at least three

valid offers. 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 national public procurements open to foreign suppliers, even if the domestic good is up to 40 percent more expensive than the imported good. For international tenders, Paraguayan law gives a maximum 10 percent price preference to domestic goods and services. The law also requires 25 percent minimum Paraguayan labor for construction projects. Paraguay's public procurements historically have been associated with corruption allegations, although Paraguay 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 remained on the Watch List in the Special 301 Report. 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 protection and enforcement of IP rights. 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 has made efforts to improve administrative activities and some enforcement efforts, including establishing an interagency coordination center to provide a unified government response to IP violations. However, several concerns remain, including the lack of deterrent-level penalties for IP crimes and government use of unlicensed software. The United States also remains concerned with the lack of enforcement action in Ciudad del Este, one of the main destinations for illicit goods in the region, which continues to be named in the Notorious Markets List. In addition, the United States encourages Paraguay to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

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. Paraguay's Investment Incentive Law lays out a government approval mechanism exempting foreign investors investing over $5 million from paying taxes on repatriation of capital for up to 10 years from initiation of the project.

A 2019 law reformed Paraguay's tax regime, which included a new 15 percent tax for non-residents on profits received from economic and financial activities carried out in Paraguay, including digital services, as well as earnings from rights and assets exploited in the country.

PERU

TRADE SUMMARY

The U.S. goods trade surplus with Peru was $2.2 billion in 2020, a 38.6 percent decrease ($1.4 billion) over 2019. U.S. goods exports to Peru were $7.7 billion, down 20.5 percent ($2.0 billion) from the previous year. Corresponding U.S. imports from Peru were $5.5 billion, down 10.1 percent. Peru was the United States' 31st largest goods export market in 2020.

U.S. exports of services to Peru were an estimated $4.0 billion in 2019 and U.S. imports were $1.4 billion. Sales of services in Peru by majority U.S.-owned affiliates were $2.4 billion in 2018 (latest data available), while sales of services in the United States by majority Peru-owned firms were $10 million.

U.S. foreign direct investment in Peru (stock) was $7.5 billion in 2019, a 29.6 percent increase from 2018. U.S. direct investment in Peru is led by mining, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States–Peru Trade Promotion Agreement

The United States–Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2009. Under the Agreement, Peru currently provides duty-free access to nearly all U.S. exports. The United States and Peru meet regularly to review the implementation and functioning of the Agreement and to 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 all used cars and trucks, irrespective of fuel or engine type. 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. It is prohibited to convert used vehicles to natural gas.

Peru levies a specific excise tax (ISC) of 2.17 Peruvian Nuevo Sol (PEN) (approximately $0.59) per liter 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 (*e.g.*, 3.47 PEN (approximately $0.95) 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.

Non-Tariff Barriers

Peru has eliminated many of its non-tariff barriers and, in accordance with its PTPA commitments, subjects remaining measures 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 more than two 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 minor 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

The "Healthy Food Promotion Act for Children and Adolescents" (Law No. 30021 of 2013) mandates a front-of-package warning statement on food labels for prepackaged foods. The law 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. The United States remains concerned with the 2017 Manual on Health Warnings, which implemented this law, and which Peru notified to the World Trade Organization (WTO) in September 2017.

The Manual contains technical specifications and guidelines for the inclusion of these warnings on processed food labels and in media advertisements. The United States supported concerns raised by Costa Rica and Ecuador at the WTO Committee on Technical Barriers to Trade in May 2020 and June of 2020. In June 2020, Peru granted a one-year extension for the use of temporary stickers, which ends in June 2021. After that date Peru will require the use of a permanent label for compliance with warning labels.

The United States will continue to monitor ongoing developments related to these issues and engage with Peru as appropriate.

Sanitary and Phytosanitary Barriers

On January 6, 2021, the Peruvian Congress passed Law No. 31111, which extended Peru's moratorium on the cultivation and import for cultivation of genetically engineered organisms, such as seeds, for fifteen years. Law No. 31111 extends Peru's prior ten-year moratorium under Law No. 29811, which would have expired in November 2021. Peru has not supported its biotechnology moratorium with a risk assessment or otherwise put forward a scientific justification for it, as called for in the measure's implementing regulations. Peru never notified Law No. 29811 or its implementing regulations to the WTO Committee on Sanitary and Phytosanitary Measures, and Law No. 31111 does not appear to address Peru's undefined tolerance levels for accidental presence of genetically engineered components in conventional planting seeds.

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 2020. The United States also has raised its concerns in a number of discussions with business associations.

In January 2018, Peru's Ministry of Foreign Trade and Tourism (MINCETUR) sent a letter to the U.S. Department of Agriculture (USDA) formally notifying new sanitary import requirements for U.S. processed meat and egg products. 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 accompany shipments of processed products of animal origin, including processed meat and egg products as of 2018. 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. During the meeting of the U.S.–Peru TPA Standing Committee on SPS Matters on September 3, 2020, the United States pressed Peru for a response to the FSIS letter and to allow trade to continue until both countries negotiate and agree to new certificate requirements. In January 2021, SENASA indicated that it was still reviewing the United States' proposal, but DIGESA confirmed that it was willing to accept the proposed FSIS certificate to meet the SESC requirement. In the meantime, U.S. exporters continue to report that Peru is not allowing the importation of processed meat and egg products or ingredients.

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 Armed Forces Purchasing Agency – as well as directly with foreign state-owned entities, as has historically been the case – the degree to which this change has been implemented remains unclear. Legislative Decree 1444 issued in September 2018 modified the public procurement law to allow government agencies to use government-to-government (G2G) agreements to facilitate procurement processes. Following the execution of recent infrastructure tenders using the G2G model in 2019, an increasing number of ministries and government entities are now requiring foreign companies, including U.S. firms, to obtain sponsorship by their respective governments in order to compete for major procurements.

The United States Government is not permitted to sign such contracts that would make it financially liable for the work and overall performance of the private sector companies that would be conducting the work. Peru's use of G2G procurements has prevented U.S. domiciled companies from competing in some relevant government tenders.

U.S. firms continue to identify corruption as a significant problem in the government procurement process in Peru. The United States continues to engage with the Government of Peru to establish better rules and conditions for fair and transparent competition in public procurements through technical assistance in the preparation of legislation to improve Peru's public supply chain procurement system.

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. 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.

INTELLECTUAL PROPERTY PROTECTION

Peru remained on the Watch List in the Special 301 Report.

Peru continues to take positive steps relating to intellectual property (IP) protection and enforcement, including with respect to online piracy, interagency coordination, and IP court proceedings. Such steps include the signing of a memorandum of understanding with the United States Patent and Trademark Office to strengthen the Peruvian judiciary's capacity and enforcement with respect to IP laws, as well as partnering with the World Intellectual Property Organization to modernize Peru's IP system. 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 and Gamarra, popular shopping centers in Lima, Peru, are 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 anti-camcording legislation 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.

BARRIERS TO DIGITAL TRADE

In January 2020, Peru adopted Emergency Decrees 006-2020 and 007-2020, establishing the National System of Digital Transformation to provide an overall framework for developing policies related to cybersecurity, data transfers and storage, and other issues for digital service providers. In May 2020, Peru's Secretariat for Digital Governance published draft implementing regulations. Based on the draft, U.S. stakeholders have expressed concerns that the implementing regulations would impose potentially burdensome data localization and cybersecurity requirements that may give preferential treatment to domestic service providers. The United States will continue to engage with the Peruvian Government to ensure that the regulations are implemented in a manner that is consistent with the PTPA.

THE PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with Philippines was $3.4 billion in 2020, a 18.2 percent decrease ($751 million) over 2019. U.S. goods exports to Philippines were $7.8 billion, down 10.2 percent ($878 million) from the previous year. Corresponding U.S. imports from Philippines were $11.1 billion, down 12.7 percent. Philippines was the United States' 30th largest goods export market in 2020.

U.S. exports of services to Philippines were an estimated $3.4 billion in 2019 and U.S. imports were $5.7 billion. Sales of services in Philippines by majority U.S.-owned affiliates were $3.8 billion in 2018 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $34 million.

U.S. foreign direct investment in Philippines (stock) was $6.9 billion in 2019, a 0.3 percent increase from 2018. U.S. direct investment in Philippines is led by nonbank holding companies, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States–Philippines Trade and Investment Framework Agreement

The United States and the Philippines signed a Trade and Investment Framework Agreement (TIFA) on November 9, 1989. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Philippines.

IMPORT POLICIES

Tariffs

The Philippines' average Most-Favored-Nation (MFN) applied tariff rate was 6.1 percent in 2019. The Philippines' average MFN applied tariff rate was 9.8 percent for agricultural products and 5.5 percent for non-agricultural products in 2019. The Philippines has bound 66.9 percent of its tariff lines in the World Trade Organization (WTO), with an 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 TRQs on numerous agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products, with in-quota tariffs ranging from 30 percent to 50 percent.

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. A 30 percent tariff is imposed on completely built passenger vehicles with capacity of less than 10 persons (*i.e.*, cars) as

well as motorcycles; 20 percent for passenger vehicles with capacity of 10 or more (*i.e.*, buses); and, 20 percent for commercial vehicles (*i.e.*, trucks). New vehicle imports from Association of Southeast Asian Nations (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 (BOI) under Executive Order No. 226.

The Philippines Motor Vehicle Development Program, implemented by the BOI, is designed to spur exports and encourage local assembly through low tariffs on components. A one percent tariff applies to completely knocked-down (CKD) kits imported by registered participants and a zero percent tariff for CKD kits for the assembly of hybrid and electric vehicles.

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 connection with 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 the Philippines enacted a law on the tariffication of rice.

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 TIFA, 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. The Philippine President signed rice tariffication legislation into law on February 14, 2019, replacing rice quantitative restrictions with tariffs.

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. At the start of 2021, the Tariff Commission recommended that the government grant industry petitions to further extend the concessionary rates on mechanically deboned or separated poultry through 2025. In January, the Philippine President signed the Executive Order implementing the extension of the rate through December 31, 2022. The petition to again reduce the duty on frozen potato fries to zero percent is pending before the Tariff Commission as of March 2021.

Non-Tariff 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. 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 transaction 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. Some importers have reported that the Philippine 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. Members of the Philippine House Committee on Ways and Means have also raised concerns about this practice of using reference prices to assess duties.

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 on automotive standards issues in the context of the ASEAN–United States Trade and Investment Framework Arrangement. 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

Sanitary and Phytosanitary Import Permits

The Philippines Department of Agriculture requires importers to obtain a sanitary and phytosanitary import clearance (SPSIC) 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. In 2019 and 2020, the Philippines stopped SPSIC issuances for imported rice and horticultural products, including U.S. table grapes, chipping potatoes, feed wheat, whole birds, rice, and corn. Stakeholders have asserted that the reasons given for halting SPSIC issuance often have nothing to do with protecting human, animal, or plant life or health, or guaranteeing products are safe for consumers, and instead appear related to protecting domestic producers from import competition. The United States raised these concerns at the

October 2020 WTO Import Licensing Committee meeting and the November 2020 WTO Committee on Agriculture meeting.

African Swine Fever

Since the confirmation of African Swine Fever (ASF) in the Philippines on September 9, 2019, both national and local government units (LGUs) have maintained temporary restrictions on the movement (both entry and exit) of live hogs and pork products with LGU requirements typically exceeding international and national government recommendations, particularly for heat-treated products. Batangas province restricted the retail sale of all imported frozen pork, including from countries not affected by ASF such as the United States. Such constraints on the movement of processed pork products resulted in lower demand for imported frozen pork, which is used as a raw material for processed meat products. The U.S. Department of Agriculture is engaging in multiple cooperative programs with the Philippines to address the issue.

Import Registration - Lake Food Colorings

Since 2018, the Philippine Food and Drug Administration (PFDA) halted new registrations and discontinued renewal of pre-existing registrations for products containing lake colors (a type of fat-soluble food color additive). PFDA's decision raises concerns regarding possible inconsistency with international standards for food additives. The Philippines notified this measure to the WTO in August 2019 but has not responded to comments from the United States. Global manufactures also sent a food additive petition to the PFDA for the authorization of lake colors in 2019, but has not yet received any decision.

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 approvals and renewals of applications have been slow under the bureaucratic process of the new Joint Department Circular. 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. In 2020, the Philippines also became a co-sponsor of the WTO International Statement on Agricultural Applications for Precision Biotechnology, which reiterates high-level approaches regarding the fair, science-based treatment of precision biotechnology, such as genome editing.

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, including imported meat, than it does on the sale of freshly slaughtered meat (which is sourced primarily from domestically raised animals). 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, the 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 U.S. Department of Agriculture Food for Progress project includes a cold

chain component in its overall mission to improve Philippine sanitary and phytosanitary (SPS) measures and facilitate agricultural trade.

On June 2, 2020, the Philippine Department of Agriculture issued Administrative Order No. 24 that added conditions to approve SPSIC permits by requiring importers to obtain certificates of availability of space of accredited cold storage warehouses and meat importation usage reports for imported meat and poultry. However, the Department of Agriculture subsequently suspended implementation of the Administrative Order. On September 16, 2020, the Philippines reinterpreted its existing regulations to expand its longstanding ban on the sale of imported frozen fishery products at local fresh meat, fish, and produce markets (*i.e.*, so-called "wet" markets) to supermarkets and electronic commerce. As a result, the sale of frozen fish products is limited to institutional buyers, such as food processors, and hotel and restaurant chains.

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 a 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 Recovery and Tax Incentives for Enterprises Act contains language that would eliminate these preferential tax rates and benefits, but as of March 2021, the Philippine Congress had not adopted any such changes.

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 offsets 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 the Philippines has made progress in intellectual property (IP) protection and enforcement since its removal from the Watch List under Special 301 in 2014, the United States continues to have concerns. U.S. right holders report issues with increasing online piracy, counterfeit drugs, and counterfeit apparel. Such counterfeiting and piracy concerns led to the continued inclusion of Manila's Greenhills Shopping Center and a global online shopping website with local presence on the Notorious Markets List. Stakeholders also criticize 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 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, including through engagement under the TIFA.

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 entreprises, 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. 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 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.

Professional Services

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations provide for exceptions on the basis of reciprocity, such as medicine, pharmacy, nursing, and engineering. The practice of law, radiology and x-ray technology, criminology, and marine deck and engine officers are still reserved to Philippine citizens.

Advertising Services

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Retail Services

Philippine law restricts foreign investment in small retail ventures to Philippine nationals. Foreigners may own larger retail ventures subject to several requirements, including paid-in capital of $2.5 million or more, an $830,000 minimum investment per store, and parent company net worth of over $200 million. In addition, the retailer must either own at least five other retail stores or have at least one outlet with capitalization of $25 million or more. For retailers of high-end or luxury products, the minimum investment in each retail store is $250,000, and the net worth of the parent company must exceed $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling. Retail enterprises with foreign ownership exceeding 80 percent of equity must offer at least 30 percent of their shares to local investors within eight years of the start of operations through public offering of stock.

Telecommunications Services

Philippine regulators define 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. The Philippine Congress is considering legislation that would exempt telecommunications from the definition of a "public utility," paving the way for increased foreign ownership.

The Philippines' existing telecommunication regulations limits competition and creates barriers to entry. Telecommunications services in the Philippines are classified as either "basic" or "enhanced" value added. Internet service providers as value-added service providers cannot build their own fiber network for commercial purpose and are required to connect to franchised telecommunication facilities for their service. Only companies with a legislative franchise and public telecommunication entities are allowed to build transmission and switching facilities, offer a local exchange service (landline), and operate inter-exchange service (backbone) and an international gateway facility. The anticipated Open Access and Data Transmission bill seeks to lower barriers to market entry, fast-track and lower the cost of deploying broadband facilities, and make more spectrum available for Internet service.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

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. 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.

Electronic Commerce

Some U.S. stakeholders have raised concerns about the proposed Internet Transaction Act, introduced in June 2020, which aims to promote electronic commerce, consumer protection, and equal treatment of resident and non-resident online platforms, and which would require platforms and online businesses selling to customers in the Philippines to register in the Philippines.

INVESTMENT BARRIERS

Performance Requirements

In 2015, the Board of Investments (BOI) 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 BOI 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 such as radiology, law, and technology, and 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 higher education institutions and organizations (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 BOI imposes a higher export performance requirement on foreign-owned enterprises whose foreign ownership exceeds 40 percent, with respect to incentives such as specific tax credits and tax exemptions. To qualify for BOI incentives, at least 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 such a foreign-owned firm's proposed activity is listed in the Investment Priorities Plan (IPP) or qualifies as a "pioneer activity." The Philippine Congress is considering revisions to the BOI incentives as part of an economic overhaul package.

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 $2.2 billion in 2020, a 53.1 percent decrease ($2.5 billion) over 2019. U.S. goods exports to Qatar were $3.4 billion, down 47.1 percent ($3.0 billion) from the previous year. Corresponding U.S. imports from Qatar were $1.2 billion, down 30.3 percent. Qatar was the United States' 46th largest goods export market in 2020.

Sales of services in Qatar by majority U.S.-owned affiliates were $582 million in 2018 (latest data available), while sales of services in the United States by majority Qatar-owned firms were $412 million.

U.S. foreign direct investment in Qatar (stock) was $14.2 billion in 2019, a 0.3 percent increase from 2018.

TRADE AGREEMENTS

The United States–Qatar Trade and Investment Framework Agreement

The United States and Qatar signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Qatar.

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 several country-specific exceptions. Qatar's exceptions include alcohol (100 percent), tobacco (100 percent), urea and ammonia (30 percent), and steel (20 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 an average WTO bound tariff rate of 15.7 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). Qatar implemented the tax in January 2019. U.S. beverage producers report that the current tax structure, which also applies to sugar-free carbonated beverages, 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. U.S. beverage producers report that between the implementation of the excise taxes and the outbreak of the COVID-19 pandemic, they observed a 25 percent to 30 percent decline in sales.

In 2016, GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent. In May 2017, Qatar approved a draft law on the VAT, but has not committed to an implementation timeline.

Non-Tariff 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, and 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. Qatar customs charges a fine of one percent of the value of the shipment if the invoice is not legalized by the Chamber of Commerce in the country of origin. Imported agricultural products require different certificates depending on the category of the product. Meat, fish, eggs, livestock, live poultry, grains, animal feed and planting seeds require an original health certificate. All processed or shelf-stable foods exported to Qatar require a "Certificate to a Foreign Government," or in the case of U.S. exports, a U.S. Food and Drug Administration "Certificate to a Foreign Government: Food for Human Consumption." Imported meat and meat products require an original 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

Dairy Regulations

In June 2019, Qatar implemented a new regulation on dairy imports that includes restrictions on reconstitution of dairy products, and 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.

Halal Regulations

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO Committee on Technical Barriers to Trade in October 2020.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

GOVERNMENT PROCUREMENT

Cabinet Decision 16/2019 stipulates that non-Qatari companies participating in tenders must utilize local goods and services for at least 30 percent of a tender's value, including local raw materials, locally manufactured goods, transportation services, security, guarding, and catering services, or any other local services provided. 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.

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 a 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 QFC's 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 certain sectors. The Minister of Commerce and Industry can waive the national requirement for agents of foreign companies that have direct contracts with the Qatari Government.

BARRIERS TO DIGITAL TRADE

Qatar requires a license from telecommunications providers wishing to provide Voice over Internet Protocol 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 typically able to operate without a license. Only two telecommunications service providers, Ooredoo and Vodafone Qatar, both of which are majority-owned by state-controlled entities, have obtained such licenses as of early 2021.

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 Qatari 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 early 2021.

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. Outside of the designated zones, non-Qataris are permitted to own property in some residential villas and retail outlets in 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 continue to own their properties.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $12.0 billion in 2020, a 27.4 percent decrease ($4.5 billion) over 2019. U.S. goods exports to Russia were $4.9 billion, down 15.6 percent ($901 million) from the previous year. Corresponding U.S. imports from Russia were $16.8 billion, down 24.3 percent. Russia was the United States' 39th largest goods export market in 2020.

U.S. exports of services to Russia were an estimated $5.1 billion in 2019 and U.S. imports were $1.8 billion. Sales of services in Russia by majority U.S.-owned affiliates were $9.8 billion in 2018 (latest data available), while sales of services in the United States by majority Russia-owned firms were $734 million.

U.S. foreign direct investment in Russia (stock) was $14.4 billion in 2019, a 2.6 percent increase from 2018. U.S. direct investment in Russia is led by manufacturing, wholesale trade, and information services.

Sanctions and Countersanctions

Beginning in August 2014, Russia has imposed counter-sanctions on imports from the United States in response to U.S. sanctions imposed on Russia as a consequence of its actions in Ukraine. Those counter-sanctions have created uncertainty for American firms and reduced prospects for market penetration. In 2018, the Russian President signed legislation broadening extensively the Russian Government's authority to introduce additional counter-sanctions, including import and export bans, on products and services to and from the United States and other "unfriendly" foreign states. Although Russia's initial counter-sanctions were extended until December 31, 2021, 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, the ability of the Office of the U.S. Trade Representative (USTR) 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, the rule of law. That progress appears to have waned, however, as reported in the 2020 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. Moldova, Uzbekistan, and Cuba have observer status at the EAEU. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, non-tariff 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 2020, the EAEU member states had harmonized 85 percent of their tariffs governing trade with third countries. 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.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Russia's average MFN applied tariff rate for all goods was 6.7 percent in 2019 (latest data available). In 2019 (latest data available), Russia's average MFN applied tariff rate was 10.5 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 average WTO bound tariff rate of 7.6 percent. In 2019, Russia's average WTO bound tariff rate for agricultural goods (10.9 percent) was slightly higher than its average applied rates of 10.5 percent. Russia's average WTO bound rate for non-agricultural products was 7.1 percent— also slightly higher than its average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate was 128 percent in 2019.

Although Russia has implemented all the tariff reductions 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.

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. Russia took this action 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. (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 2018, the United States requested the establishment of a panel. A panel was composed in January 2019. Due to the COVID-19 pandemic, the panel does not expect to issue the report until the second half of 2021.

Since December 2013, when the Russian President 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 $220 on January 1, 2020.

Taxes

Russia applies a value-added tax (VAT) of 20 percent on goods, works, and services (with some limited exceptions). Russian and U.S. leasing companies have reported that the VAT assessed on inputs for exported final products is often not refunded and that they often must resort to court action to obtain reimbursements. Leasing companies have reported that VAT refunds on exports are the source of significant fraud, and that the Russian Government's actions to prevent fraud make it even more difficult for legitimate exporters to obtain refunds. Also of 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. Similarly, in 2020, Russia amended its tax code to exempt from VAT the royalties paid on software included in the Unified Register of Russian Software. Because only Russian software is included in the Register, the cost of using non-Russian software can be automatically 20 percent higher than using Russian software.

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, intended to cover the cost of recycling the vehicle at the end of its useful life. In April 2018, the fee for all types of vehicles was increased, on average, by 16 percent to encourage development of environmentally friendly waste management technologies. In January 2020, the average rate of the fee for passenger cars was more than doubled, purportedly to offset lower customs rates and maintain the overall level of tariffs. As a result, in 2020, recycling rates for new private passenger cars imported by their owners ranged from RUB 3,400 (approximately $47) to RUB 445,000 (approximately $6,172) and for the same used vehicles ranged from RUB 5,200 (approximately $72) to RUB 700,200 (approximately $9,860). 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.

Non-Tariff Barriers

Import Bans

On August 6, 2014, Russia issued an order banning certain food and agricultural imports from Australia, Canada, the Member States of the European Union (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, Ukraine, and the United Kingdom. In November 2020, Russia extended the ban until December 31, 2021.

In December 2018, Russia imposed a further ban on a wide variety of imports from Ukraine and on exports from Russia to 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. Since December 2018, the list of banned imported products has been amended eight times and, as of March 2021, includes 92 Harmonized System (HS) codes of products subject to import bans and 14 HS codes subject to export bans.

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.

Furthermore, 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.

Additionally, importers of U.S. alcohol products face uncertainty with regard to Russia's regulatory regime. (*For further information, see the section on Technical Barriers to Trade in 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.

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) which allows each and every product to be traced within Russia from production and 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: (1) an identification part (information about the product and a unique serial number), and (2) 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: 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; the requirement that the labels must be purchased from a Russian company; duplication with existing tracking regimes; 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.

U.S. stakeholders have raised concerns that Russia's practice 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 Russia's 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 2020, Russia continued to accelerate its promotion of import substitution and called for greater local content requirements across a variety of sectors and introduced quotas for purchases of Russian goods and services. (*For further information, see the sections on Investment Barriers* and *Government Procurement*.) Russian Government officials, including the Russian President, 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 agriculture, transport vehicles, 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).

Russia's most recent localization effort in the technology sector is a law, adopted in December 2019, requiring the pre-installation of Russian software on certain consumer electronic products (*e.g.*, smartphones, computers, tablets, and smart TVs) sold in Russia. In late December 2020, the Russian Government finalized the list of 16 categories of software requiring pre-installation (often identifying a single software program in a category), leaving technology companies very little time to undertake the necessary compatibility tests before the April 1, 2021, implementation date. Also in December 2020, the Russian Parliament added a further requirement that pre-installed browsers must provide the ability to use "by default" a Russian (or other EAEU member state) search engine, further eliminating consumer choice. Although the Russian Government presented the mandate 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 has raised concerns directly with the Russian Government and 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.

In June 2020, the Ministry of Industry and Trade (MIT) proposed to introduce additional limitations on procurements of foreign-made electronics in Russia and expand the existing list of Russian manufacturers subject to public procurement preferences. If approved, Russia would effectively ban public procurement of certain types of radio electronic goods. A so-called "three's-a-crowd" rule (barring foreign goods from competing in government tenders if there are two equivalent goods available from an EAEU member state) is applied for electronic products not listed in the State Register of Russian Radio-electronic Products.

Since implementing the import ban on certain agricultural 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. In 2020, the Russian Government approved an action plan to implement its new Food Security Doctrine. The Doctrine sets the self-sufficiency thresholds for various product groups, ranging as high as 95 percent for some products. In addition, the Doctrine sets the task of achieving a positive trade balance of agricultural products, raw materials, and food. In addition, 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 receive significantly fewer registrations than do Russian firms. In the heavy machinery sector, the MIT had called for increasing the share of machinery and tool equipment produced domestically from the current 10 percent to 60 percent by 2020, but those benchmarks do not appear to have been met.

The Russian Government has also targeted the healthcare industry for localization. In November 2015, Russia extended the "three's-a-crowd" localization policy to government tenders for drugs. In April 2019, MIT published a draft of the new Pharma 2030 program focused on increasing the domestic production of innovative drugs and encouraging their export.

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. In addition, Russia applies its "three's-a-crowd" localization policy to tenders for certain medical devices (mostly low-technology goods). 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 while it 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.

In 2015, the Russian Government began to extend its local content requirements beyond government procurement to include 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 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 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 $10.4 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.

Russia has expanded its localization policies beyond requiring the use of Russian-made goods to increasingly favor Russian-origin services. (*For further information, see the section on Services.*)

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 beverages with the Federal Supervisory Service

for Protection of Customers Rights and Human Well-Being (Rospotrebnadzor). Since 2013, Russia's 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.

In December 2018, the EEC adopted a technical regulation revising the alcoholic product safety requirements in the EAEU. Although stakeholders report that the revised regulation includes some improvements from the original version (*e.g.,* liberalized ingredient labeling and reduced the size of the warning statement), some concerns remain. For example, the definitions for different categories of spirits, the use of analytical parameters for certain product categories, minimum aging requirements, product certifications, and conformity assessment procedures all remain unclear within the regulation. The Regulation was originally scheduled to enter into force on January 9, 2021, but the EEC has postponed implementation until January 1, 2022. The United States will continue to engage with Russia to ensure that stakeholder concerns are addressed.

Stakeholders have also noted that Russia requires one or multiple certificates for imported wine from the United States even when those wines conform to both U.S. and Russian standards. Often these certificates must be an original document issued by U.S. Government officials or an officially accredited organization which is located only in the country of importation. 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. U.S. stakeholders have raised concerns that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, stakeholders have highlighted the higher rate of denials of foreign GMP certificates, the lack of a process for paper review of corrective actions for minor deficiencies, and disparate legislatively-mandated treatment of GMP procedures for local and foreign sites.

Transparency

The United States continues to emphasize to Russia the importance of transparency. The United States has used a variety of fora, including meetings of the WTO Committee on Technical Barriers to Trade 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 has notified some proposed technical regulations and conformity assessment procedures. The United States 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, BSE provisions in the current U.S.–Russia certificates for beef and prepared meat continue, effectively, to ban imports of U.S. cooked and uncooked beef from cattle over the age of 30 months, despite the OIE's determination that the United States poses a negligible risk for BSE. Russia will not accept imports of U.S. cooked and uncooked beef from cattle over the age of 30 months until U.S.–Russia beef certificates are renegotiated to reflect the OIE guidelines and the United States' negligible risk status for BSE.

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 Commission's (Codex) maximum residue levels for these substances in beef. 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 (even where Russia's countersanctions are not in place) continues to exclude U.S. beef and beef products from 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 limits (MRLs), but again appears to have failed to provide WTO Members with a risk assessment that conforms to international guidelines. The United States will continue to press for the removal of these barriers to exports of U.S. beef and beef products.

Milk and Milk Products

In 2014, the United States and the 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 as of March 2021. 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 the 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

Even though Russia's August 2014 import ban on many U.S. agricultural products included poultry, Russia has also implemented several regulations that would restrict U.S. poultry exporters from accessing Russia's market even in the absence of this ban. For example, in December 2014, Russia banned all imports of U.S. poultry due to unsubstantiated claims (made prior to Russia's countersanctions) that it had detected restricted substances in U.S. poultry products, and concerns over regulatory changes in the U.S. poultry inspection system. 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 regulations. Moreover, Russian regulations place an impractical 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. The United States will continue to work with regulatory authorities in Russia to resolve these trade concerns.

Since 2015, Russia has imposed various restrictions on the transit of U.S. poultry through Russian territory due to highly pathogenic avian influenza. In January 2019, Russia lifted its transit ban for poultry shipments transiting Russia to Kazakhstan, but left in place traceability requirements applicable only to U.S. poultry shipments without providing a risk- or science-based justification.

Pet Food and Animal Feed

Russia requires a veterinary certificate to ship pet food and animal feed with components of animal origin to Russia. Additionally, 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 is required for all pet food and animal feed. 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 April 2019, 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. Following three more alleged GE detections, Russia imposed a temporary restriction on imports from all U.S. pet food and animal feed facilities as of March 2, 2021.

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 measure 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. In 2020, the Russian Government approved an action plan to implement its new Food Security Doctrine. Among other things, the Doctrine prohibits imports of GE organisms for the purpose of sowing, growing, breeding, and circulation; prohibits the cultivation and breeding of animals whose genetic program has been modified by GE methods or that contain genetic material of artificial origin; and, controls the importation and circulation of food products containing GE organisms (except for the import and sowing of GE organisms, growing plants, and breeding animals for study and research). The action plan includes measures to control circulation of GE material used for production of animal feed and feed additives, and medicinal products for veterinary use.

Russia has a registration system for GE food, but methodological guidelines for registering agricultural biotechnology products for feed use were finalized only in March 2020. Although these guidelines were first issued in draft format in 2018, they were never notified to the WTO. Existing feed registrations are valid for only a five-year period, whereas registrations for GE food products are valid for an unlimited period. Due to the delay in adopting feed use registration guidelines, feed registrations remain valid for only one soybean line and four corn lines. Registrations for all other previously registered corn and soybean lines—13 in total—have been expired since 2017. New registrations will require 2-3 years to process under the new guidelines. The application fee costs on average $80,000 and applies to the first registration of GE food and feed products as well as 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 veterinary drugs that it has not approved domestically, 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 and cannot be removed from raw meat and poultry products. The United States is not aware of a risk assessment from Russia to justify its zero-tolerance policy.

Systemic Issues

In addition to the product-specific issues discussed above and the 2014 import ban, U.S. exporters of agricultural products continue to face systemic issues in Russia. For example, Russian and EAEU

veterinary certificates require U.S. regulatory officials to certify that exported products satisfy EAEU sanitary and veterinary requirements and meet certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear to be excessively restrictive and lacking in scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where the product in question could pose no risk of transmission. 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.

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 industries that use natural gas as a production input, such as the fertilizer industry. 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 despite 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 the Russia 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 $1.9 billion) to its automotive industry between 2018 and 2020. Beginning on July 1, 2019, the Russian Government launched a RUB 19 billion (approximately $264 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. In September and December 2019, the Government of Russia amended 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 including sugar, meat fish, dairy and other products.

GOVERNMENT PROCUREMENT

Russia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2013. 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 GPA within four years of its WTO accession. On August 19, 2016 Russia 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 relating to federal or municipal government procurement that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Given the breadth of the Russian Government's role in the economy and the scope of the numerous import substitution policies and local content requirements, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Government procurement restrictions have accelerated since 2014 when Russia established a 15 percent preference for a variety of goods (including certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use.

In addition, Russia has 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, adopted in 2015, specifically promotes import substitution and localization, restricting government procurement (and SOE purchases) of foreign-made products. It provides 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 percent to 50 percent domestic parts, with increasing targets each subsequent year. Since 2015, Russia has reaffirmed and expanded the ban on government procurement of a wide range of foreign-made products, including, but not limited to, furniture, vehicles, machinery and equipment, tools, appliances, paper and cardboard, and shoes and clothing. 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 and in 2020 released a list of more than 200 strategically important medicines that must be produced in Russia. The Russian Government has 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 and established minimum purchasing requirements of domestic goods. In April 2020, the Government of Russia introduced yet another series of bans and restrictions on the admission of foreign industrial goods for the purpose of public procurement and procurement for the needs of national defense and state security.

Russia has expanded the reach of its import substitution policies into the technology sector. Pursuant to

amendments to Russia's national procurement law, Russia has created a registry of Russian software. Foreign-made software not on the list will no longer routinely qualify for government and municipal procurement unless no similar domestically produced software is 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. According to U.S. stakeholders, because the move to domestic software was not moving fast enough, the Russian Government in 2020 proposed measures that would expand the list of companies considered Critical Information Infrastructure (CII), and thus extend to many private companies the import substitution requirements and local content requirements applied to government entities. Such a move would limit the ability of foreign-controlled entities to provide IT services to CII entities, and would require CII entities to migrate toward using only domestic software and hardware.

To oversee the implementation of these policies, 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 produced in Russia. (*For further information, see the section on Import Substitution Policies.*) In July 2020, the Duma adopted amendments to the public procurement law providing the Russian Government with additional authority to introduce fixed quotas on purchases of some foreign products by government entities.

INTELLECTUAL PROPERTY PROTECTION

Russia remained on the Priority Watch List in the Special 301 Report. Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs).

Despite recent implementation of anti-piracy legislation, Russia remains home to several sites that facilitate online piracy, as identified in the Notorious Markets List. Stakeholders continue to report that Russia needs to direct more action to rogue online platforms targeting audiences outside the country. While the right holders are able to obtain court-ordered injunctions against infringing websites, investigations and prosecutions of the owners of the large commercial websites distributing pirated material, including software, are lacking. Also, stakeholders report that in the past few years, use of mobile applications to access pirated content has increased exponentially. In 2018, right holders and online platforms in Russia signed an anti-piracy memorandum to facilitate the removal of links to infringing websites. This memorandum may be implemented as legislation that would cover all copyrighted works and apply to all Russian platforms and search engines. In addition, the Duma has approved amendments to legislation that attempts to address the increasing use of mobile applications to access illicit content.

Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the return to sender policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

Royalty collection by CMOs in Russia continues to lack transparency and lags behind the international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs.

Finally, stakeholders have also raised concerns related to the protection 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. Stakeholders report that Russia is eroding protections for

undisclosed data. Stakeholders are also concerned about recent initiatives that reportedly may inappropriately expand the use of compulsory licensing.

SERVICES BARRIERS

As noted above, Russia has begun to extend its import substitution policies beyond the provision of goods to include the provision of services.

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, since 2014, Russia has required that foreign-based credit card companies transmit data for all transactions within Russia through the National System of Payment Cards, undermining a key competitive advantage of foreign payments suppliers, which was to rely on self-owned and value-adding global processing platforms located outside of Russia. In addition, the Central Bank of Russia (CBR) offers a domestic credit card (Mir) and a system which allows cheap peer-to-peer payments for Russian retail bank customers (Faster Payment System). U.S. stakeholders have raised concerns about Russia's creeping financial nationalism and the potential for unfair competition in the provision of these services because the CBR is the state regulator as well as the service provider.

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 state-owned reinsurance company, Russia National Reinsurance Company, established in 2016.

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 of March 2021.

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

In 2015, Russia adopted legislation requiring that certain data collected electronically by companies on Russian citizens be processed and stored in Russia. Such requirements impose steep costs and significant operational challenges not only on providers of data storage and processing services, as well as a wide array of other data-intensive services, but also on manufacturers who rely on those services. Initially, nominal fines were introduced and noncompliant sites were blocked by the Russian Government, but in 2019, legislation was adopted raising the fines for non-compliance to as high as RUB 18 million (approximately $250,000). Industry stakeholders continue to raise concerns that the law limits their ability to offer a variety of services in Russia and increases the cost of doing business in Russia – particularly for small and medium-sized enterprises.

In 2016, Russia adopted the Yarovaya Amendments, requiring certain telecommunications and internet operators to store certain communications content locally for six months and store metadata related to such content for one year or longer, depending on the type of provider. In 2020, however, some of the deadlines to move data back to Russia and to increase local data-storage capacity were delayed by one year. 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. 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

Russia's Federal Law No. 208-FZ, known as the Aggregators Law, which entered into force in 2017, requires news search and aggregation services that exceed one million daily visitors and that are offered in the Russian language with the possibility of showing ads to offer advertisement services 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 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.

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 On Mass Media law, foreign investors are limited to a 20 percent equity share in Russian media companies. Russia also imposed ownership restrictions on over-the-top media service providers that provide streaming services, messaging services, or internet-based voice calling solutions. U.S. stakeholders have complained that these types of ownership restrictions reduce consumer choice and discriminate against foreign investors.

U.S. stakeholders have also raised concerns over limits on direct investments in the mining and mineral extraction sectors that they say discriminate against foreign companies, as well as a licensing regime they describe as non-transparent and unpredictable.

State-Owned Enterprises

Russia's numerous SOEs play a prominent role across much of Russia's economy. The Russian Accounts Chamber has estimated that SOEs account for about 48 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. These advantages result from SOEs' lack of transparency and lack of independence; subsidization by the government; access to preferential lending by state-owned banks; 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 SOEs; and minimal disclosure requirements. In December 2014, the Russian Government reversed a prohibition against senior government officials serving on the boards of SOEs, further tilting the playing field in favor of SOEs or state-controlled enterprises by re-introducing a governmental or political voice in the companies' decision-making processes. Government ministers or deputy ministers chair the boards of Russian Railways, RusHydro, Rostelecom, Transneft, and Russian Grids (Rosseti).

A specific variant of SOEs, state corporations, are completely owned by the 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 six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

In December 2019, the government approved the 2020–2022 Privatization Plan and plans to privatize fully 86 federal state unitary enterprises and sell its stakes in 186 joint stock companies and in 13 limited liability companies. The Russian Government still maintains a list of 136 SOEs with "national significance" that are either wholly or partially owned by Russia and whose privatization is permitted only with a special governmental decree, including Aeroflot, Rosneftegaz, Transneft, Russian Railways, and VTB. 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. Russia 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. Russia 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

Russia 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 those applied to 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 December 2020, the Russian Government imposed temporary tariff rate quotas for exports of wheat, rye, barley and corn; in January 2021, the Russian Government increased the within-quota export duty on wheat, corn and barley. The Russian Government also increased the export duties on soybeans and sunflower seeds. Russia retains the ability to modify these export duties expeditiously if the need arises, contributing to uncertainty in the market. In September 2020, the Russian President ordered the government to impose a complete ban on exports of raw and crudely processed forest products from Russia as of January 1, 2022.

Russia maintains a list of products that are deemed 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. Such concerns were realized in August 2019, when Russia placed a four-month quota on exports on ferrous waste and scrap to territories outside the EAEU; the quota was in effect between September and December of 2019. As of December 2018, precious metals ores and concentrates have also been added to the list of products subject to potential export restraint, as have 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, Russia 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 WTO commitment to eliminate discrepancies in such rates by July 1, 2013. Since June 2015, Russia has not lowered its rail freight rates charged on certain materials for exports or otherwise worked to eliminate the differential freight rates.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade surplus with Saudi Arabia was $2.2 billion in 2020, a 101.9 percent increase ($1.1 billion) over 2019. U.S. goods exports to Saudi Arabia were $11.2 billion, down 22.8 percent ($3.3 billion) from the previous year. Corresponding U.S. imports from Saudi Arabia were $9.0 billion, down 32.9 percent. Saudi Arabia was the United States' 24th largest goods export market in 2020.

U.S. exports of services to Saudi Arabia were an estimated $9.4 billion in 2019 and U.S. imports were $1.5 billion. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $4.6 billion in 2018 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were $1.7 billion.

U.S. foreign direct investment in Saudi Arabia (stock) was $10.8 billion in 2019, a 0.5 percent decrease from 2018. U.S. direct investment in Saudi Arabia is led by nonbank holding companies, wholesale trade, and mining.

TRADE AGREEMENTS

The United States-Saudi Arabia Trade and Investment Framework Agreement

The United States and Saudi Arabia signed a Trade and Investment Framework Agreement (TIFA) in July 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Saudi Arabia.

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 several 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 an average WTO bound tariff rate of 11.2 percent.

In May 2020, the Saudi Customs Authority released its amended Harmonized Tariff Schedule to increase various customs duty rates effective June 10, 2020. While the increases are within established WTO ceilings, certain rates increased up to 25 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). Saudi Arabia implemented the tax in July 2017, and in 2019 expanded the tax to include a 50 percent excise tax on all beverages with added sugar except for beverages with naturally occurring sugars. U.S. beverage producers report that the current tax structure, which also applies to sugar-free carbonated beverages, 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. U.S. beverage producers report that between the implementation of the excise taxes and the outbreak of the COVID-19 pandemic, they observed a 25 percent to 30 percent decline in sales.

In 2016, GCC Member States agreed to introduce a common GCC value-added tax (VAT) of five percent. Saudi Arabia began to apply the VAT in January 2018, and tripled the rate to 15 percent in July 2020.

Non-Tariff Barriers

Import Bans and Import Licensing

Saudi Arabia prohibits the importation of 37 categories of products, such as alcohol, pork products, and gambling devices. Furthermore, special approval is required for the importation of 23 categories of "restricted" products, such as pharmaceutical products, wireless equipment, and drones.

Customs Barriers and Trade Facilitation

U.S. private sector stakeholders 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 a lack of a mechanism for U.S. exporters to seek an advance ruling on Saudi customs procedures and regulations. However, a change in leadership at the Saudi Customs Authority in 2017 has resulted in reduced documentation requirements, shortened clearance times in major ports, and increased cooperation across Saudi trade agencies. Over the past three years, the Saudi Customs Authority continued its efforts to make customs policies and procedures more business-friendly.

Saudi Arabia ratified the WTO Trade Facilitation Agreement (TFA) in July 2016. Saudi Arabia 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 Saudi Arabia's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Over the past few years, Saudi Arabia has revised technical regulations for a variety of products relying primarily on standards developed by the International Organization for Standardization and International Electrotechnical Commission. 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 Committee on Technical Barriers to Trade (TBT Committee) Decision on international standards.

Energy Efficiency

U.S. automobile manufacturers have expressed concern that implementation of the Saudi Corporate Average Fuel Economy regulations could preclude the sale of certain popular U.S. vehicle models in Saudi Arabia. Saudi Arabia is also developing and implementing new energy efficiency regulations 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 barriers to trade. Working with the U.S. Government, some U.S.-based standards development organizations have succeeded in having their standards referenced in updated energy efficiency regulations. The United States continues to encourage Saudi Arabia to develop and implement appropriate mechanisms for stakeholder consultation in regulatory decision-making to help ensure that interested parties have opportunities to provide comments on draft regulations and to provide a reasonable time for those comments to be taken into account.

Halal Regulations

Saudi Arabia suspended imports of U.S. poultry in June 2018 due to implementation of regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process. 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.

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO TBT Committee in October 2020.

Sugar, Salt, and Food Labeling Requirements

In March 2019, Saudi Arabia notified to the WTO its intention to make mandatory a front-of-package nutritional labeling program for food products, but withdrew the measure in December 2019 as Saudi authorities conduct a further review of proposed 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 regarding 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 (SABER) for certain regulated exports to Saudi Arabia. Importers of these products are required to register via the online SABER platform to obtain Product Certificates of Conformity (PCoC) and Shipment Certificates of Conformity (SCoC). Products requiring PCoCs include, but are not limited to: detergents, building materials, paints, vehicle spare parts,

lubricant oils, and textiles. An SCoC must be obtained for each shipment containing a regulated product. An increasing number of U.S. companies have expressed concerns with the new SABER platform, and some have reported inconsistencies in product testing fees and clearance processes. The United States has questions about how the scheme will relate to GCC conformity assessment requirements.

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 the WTO of a draft GSO technical regulation that would, among other things, require pre-market testing by accredited labs for restricted materials in electrical goods. The measure would also require each type of good to be registered annually, and includes a requirement to submit sample products prior to receiving approval for use in the GCC. The United States has raised concerns that pre-market testing has a significant negative impact on the imports of U.S. electrical and electronic equipment industries (such as information and communications technology, medical equipment, machinery, and smart fabrics), especially as such testing differs from more common practices to demonstrate that products comply with restrictions on hazardous substances regulations, which typically allow self-declaration of conformity.

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that 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 does not regionalize the United States in the event that U.S. cases of highly-pathogenic avian influenza are notified to the World Organization for Animal Health (OIE). Instead Saudi Arabia restricts imports from the entire United States and not the region with the reported outbreak per OIE guidelines. The United States continues to press Saudi Arabia to do so.

In October 2018, Saudi Arabia proposed maximum residue limits for pesticides applicable for meat, grains, and horticultural products, many of which do not conform to those set by the Codex Alimentarius Commission. 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

Saudi Arabia has begun implementation of new requirements that require trading partners to adopt model certificates, which has interrupted U.S. exports of eggs, egg products, and seafood. The United States has requested Saudi authorities to instead accept comparable U.S. certifications.

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 also are required to establish a training program for Saudi nationals. However, most defense procurement is negotiated on a case-by-case basis. The Saudi Government is in the process of reforming its procurement processes and policies to incorporate new ambitious goals of Saudi employment and localized production. In addition to offsets, the Saudi Government is focused on "localization" of purchases of goods and services, and increasing the percentage of Saudi nationals employed by foreign firms, known as "Saudization." Previously, the government required offsets in investments 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.

Saudi Arabia revised its Government Tenders and Procurement Law and the amendments were approved on April 24, 2020. The law regulates the contractual relationship between a public/government entity and contractors in terms of government tenders.

U.S. companies have reported long delays and difficulties 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. 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. 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 not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2007. Although Saudi Arabia committed to initiate negotiations for accession to the GPA 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. Saudi Arabia remained on the Priority Watch List in the Special 301 Report. The Saudi Authority for Intellectual Property has taken steps to improve IP protection, IP enforcement, and IP awareness throughout Saudi Arabia. However, the SFDA continues to grant marketing approvals to Saudi companies that raise concerns about Saudi Arabia's system for providing effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for innovative pharmaceutical products. The approvals reportedly relied, directly or indirectly, on data created by U.S. pharmaceutical

companies that is subject to Saudi Arabia's system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data when generated to obtain marketing approval. The SFDA's continued actions and lack of redress for affected companies have intensified significant concern among U.S. industry stakeholders.

The United States continues to remain concerned about reportedly high levels of online piracy in Saudi Arabia, particularly through illicit streaming devices, which right holders report are widely available and generally unregulated in Saudi Arabia. Right holders have expressed further concerns regarding effective civil enforcement of IP rights, including the ability to file civil actions, enforce judgments, and assess deterrent-level fines against infringers. Additionally, right holders remain concerned that criminal sentences and financial penalties are not consistently imposed.

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

SERVICES BARRIERS

Financial Services

Saudi Arabia limits foreign ownership in commercial banks to 40 percent of any individual bank operation and foreign ownership in investment banks and brokerages to 60 percent.

Insurance Services

Saudi Arabia requires that all insurance companies are 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, dental, and veterinary services, must have a Saudi partner. As a general rule, the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment; however, this rule is not consistently applied and there are examples of services companies operating in Saudi Arabia without a partner. 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 a firm can demonstrate it has been incorporated for at least 10 years and has operations in at least 4 different countries. Law firms, like accounting and architecture firms, were previously subject to a 75 percent foreign ownership limit. A judicial decision has created uncertainty around this requirement. 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 are no qualified Saudi alternatives. 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 contains a data localization requirement for certain categories of sensitive data. While not yet implemented, such requirements are likely to create serious market access barriers for cloud and other information and communications technology (ICT) services provided on a cross-border basis. In addition, the CITC would gain broad powers to require cloud and other ICT service providers to install and maintain governmental filtering software on their networks, potentially allowing further restrictions on other internet-based services. Stakeholders also raised concerns about cybersecurity control frameworks published by the National Cybersecurity Authority (NCA) in 2018 and 2020, which require that government entities and operators of critical national infrastructure host and store data within Saudi Arabia. Stakeholders have expressed concerns that the NCA is applying these requirements to a broader array of private sector companies, and that these requirements could have a detrimental impact on U.S. cloud services providers.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Foreign investment is currently prohibited in ten 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 several conditions, including investing more than $50 million in the Saudi economy over five years and meeting sector specific localization requirements. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

In 2018, Saudi Arabia began to allow foreign ownership in businesses providing services relating to road transportation, real estate brokerage, labor recruitment, and audiovisual display. All foreign investment in Saudi Arabia requires a license from the Ministry of Investment (MISA), which must be renewed periodically. While the MISA 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 can also experience bureaucratic delays after receiving their license, such as delays in 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, if the investor(s) agrees not to sell the relevant shares for at least two years.

SINGAPORE

TRADE SUMMARY

The U.S. trade balance with Singapore shifted from a goods trade surplus of $4.8 billion in 2019 to a goods trade deficit of $3.8 billion in 2020. U.S. goods exports to Singapore were $27.1 billion, down 13.2 percent ($4.1 billion) from the previous year. Corresponding U.S. imports from Singapore were $30.8 billion, up 16.8 percent. Singapore was the United States' 14th largest goods export market in 2020.

U.S. exports of services to Singapore were an estimated $23.7 billion in 2019 and U.S. imports were $10.2 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $88.1 billion in 2018 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $6.8 billion.

U.S. foreign direct investment in Singapore (stock) was $288.0 billion in 2019, a 13.1 percent increase from 2018. U.S. direct investment in Singapore is led by manufacturing, finance and insurance, and wholesale trade.

TRADE AGREEMENTS

The United States–Singapore Free Trade Agreement

The United States–Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The United States and Singapore meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

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 an average WTO bound tariff rate of 9.5 percent.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling

In March 2020, Singapore's Ministry of Health published a fact sheet explaining the Nutri-Grade system that will rate pre-packaged, non-alcoholic beverages as "A," "B," "C," or "D" based on levels of sugar and saturated fat. The labels will be mandatory for beverages in categories "C" and "D," and advertising will be prohibited for category "D" beverages. The grading system is expected to take effect at the end of 2021. As of March 2021, Singapore had not yet notified this proposed measure to the WTO, although the United States has submitted extensive comments to Singapore through the WTO Inquiry Point. The United States will continue to urge Singapore to notify this measure to the WTO and request at least a two-year implementation period after the final measure has been published.

Sanitary and Phytosanitary Barriers

Beef, Pork, and Poultry Pathogen Reduction Treatments

Prior to 2012, the Singapore Food Agency's (SFA) predecessor, the Agri-Food and Veterinary Authority (AVA), prohibited the use of all pathogen reduction treatments (PRTs) in the production of beef, pork, and poultry products sold in Singapore, which effectively limited the number of U.S. suppliers that could export frozen meat into the country. Although Singapore now permits the use of nine PRTs on fresh, chilled, and frozen meat and poultry, U.S. industry is hopeful additional PRTs can be approved in the near future pursuant to a 2016 bilateral letter exchange on sanitary and phytosanitary (SPS) issues. One of the most important PRTs in use in the United States, which Singapore has not yet approved, is hypobromous acid (HOBr)/DBDMH. As more than 60 percent of beef plants in the United States reportedly use HOBr/DBDMH, SFA approval would greatly strengthen bilateral trade.

SFA has suspended all new approvals until the agency undergoes an internal review of its regulatory framework around PRTs. In August 2020, SFA sent out a note seeking feedback from trading partners and local meat importers on a proposal for a more liberalized approach to regulating the use of PRTs in Singapore. Subsequent to this ongoing, "targeted" consultation, SFA will make the necessary changes in response to the comments received, and proceed to the final rulemaking process, which also requires a mandatory public consultation process.

Pork Trichinae Testing

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 the requirement delays export by two to three weeks, adding to inventory and related costs (including expensive trichinae testing). 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. Under the terms of the letter exchange, the United States and Singapore indicated their intention 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, U.S. stakeholders continue to raise concerns 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 (GIs) as part of its obligations under the Singapore–European Union 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.

SERVICES BARRIERS

Audiovisual Services

Pay Television

In 2011, the Media Development Authority (MDA), now the Infocomm 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" 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 March 2021. 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 $6.9 billion in 2020, a 184.4 percent increase ($4.5 billion) over 2019. U.S. goods exports to South Africa were $4.5 billion, down 17.0 percent ($913 million) from the previous year. Corresponding U.S. imports from South Africa were $11.4 billion, up 45.8 percent. South Africa was the United States' 42nd largest goods export market in 2020.

U.S. exports of services to South Africa were an estimated $2.6 billion in 2019 and U.S. imports were $2.0 billion. Sales of services in South Africa by majority U.S.-owned affiliates were $7.6 billion in 2018 (latest data available), while sales of services in the United States by majority South Africa-owned firms were $204 million.

U.S. foreign direct investment in South Africa (stock) was $7.8 billion in 2019, a 6.8 percent increase from 2018. U.S. direct investment in South Africa is led by manufacturing, finance and insurance, and wholesale trade.

TRADE AGREEMENTS

The United States–South Africa Trade and Investment Framework Agreement

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) on June 18, 2012, amending the original 1999 agreement. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and South Africa.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

South Africa's average Most-Favored-Nation (MFN) applied tariff rate was 7.7 percent in 2019 (latest data available). South Africa's average MFN applied tariff rate was 8.6 percent for agricultural products and 7.6 percent for non-agricultural products in 2019 (latest data available). South Africa has bound 94.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.2 percent, including 39 percent for agricultural products and 15.7 percent for non-agricultural products (latest data available). 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 European Union (EU) goods in South Africa due to the EU–South Africa Trade and Development Cooperation Agreement (TDCA) of 1999. South Africa's tariffs, when applied to imports from the EU on TDCA-covered tariff lines, average 4.5 percent. 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 European Union–South African Development Community (SADC) Economic Partnership Agreement (EPA), which entered into provisional force in October 2016 and remains in force while awaiting ratification by all EU Member States, will lead to greater disparities in tariff levels for U.S. exports. This

further erodes U.S. export competitiveness in South Africa and the region. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa noting the unilateral tariff benefits the United States offers South African imports under the African Growth and Opportunity Act and the Generalized System of Preferences.

Over the years, the South African Government has encouraged domestic industry to appeal for increases up to the WTO bound tariff rates for products in which 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 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, on November 6, 2019, the South Africa Government, poultry industry, unions, and importers signed a Poultry Sector Master Plan (PMP) and created a PMP Council to monitor its implementation.

On March 13, 2020 South Africa increased the tariff from 37 percent to 62 percent on bone-in chicken portions. It also increased tariffs on frozen boneless chicken cuts from 12 percent to 42 percent. The increased duty will apply to poultry imports from all countries excluding European Union and Southern African Development Community members.

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 guidelines, administrative efficacy, and improper transfer of quota allocations. In July 2018, ITAC and South Africa's Agriculture Department (DALRRD)[1] announced their intention to review the guidelines. They 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 additional 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

[1] In 2020, South Africa's Agriculture Department – the Department of Agriculture, Forestry and Fisheries (DAFF) underwent a reorganization and became the Department of Agriculture, Land Reform and Rural Development (DALRRD). To avoid confusion, DALRRD is used throughout this NTE Report for all references to South African's Agriculture Department.

were finalized on February 1, 2019 and remain in place; however, they did not take into account U.S. Government comments.

Taxes

The Ministry of Finance tax on sugar-sweetened beverages, 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.

Non-Tariff Barriers

Import Bans and Import Restrictions

The South African Department of Trade, Industry and Competition (DTIC) prohibits the import of certain classes and types of goods into South Africa, but an importer may apply for an import permit from ITAC in certain cases. ITAC also 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 "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 have been concerned that these draft 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. The United States submitted WTO comments on these measures in August 2014. As of March 2021, the Department of Health had not put into effect the 2014 draft regulations and was reconsidering the proposed labeling requirements.

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 would 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. The Department of Health is currently reviewing comments on the regulation.

Certification for EMC Goods

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. SABS stated it was taking the measures due to "the influx of low quality products into the country and the risks they pose to consumers." In June 2017, SABS implemented the 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 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. The 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, DALRRD agreed that a U.S. Department of Agriculture (USDA) veterinarian would sign the export health certificate and accepted that the exporter would provide the container and seal information below the USDA veterinarian signature on the letterhead certificate. DALRRD subsequently required that a USDA veterinarian sign both the health certificate and the container seals for subsequent certificate negotiations. The U.S. Government has provided numerous and extensive explanations regarding U.S. export processes and that USDA veterinarians are not present at each port to certify container and seal information. The United States continues to urge DALRRD to accept the 2016 agreed-upon certification procedures.

Pork

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes stringent trichinae-related freezing requirements for imported pork and pork products. The United States does not consider such requirements to be necessary for U.S. pork products. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States achieved the successful eradication of pseudorabies in commercial herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to concerns related to Porcine Reproductive and Respiratory Syndrome. This restriction does not appear to be consistent with current international standards.

In January 2016, the U.S. Government and DALRRD 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. In December 2017, DALRRD 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 DALRRD 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 DALRRD 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 DALRRD 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 has prohibited imports of apples from the Pacific Northwest, except for apples originating from orchards that have been declared free from apple maggot (*Rhagoletis pomonella)*. The United States is currently seeking access for apples that originate from areas where apple maggot is present, provided that the apples undergo a cold treatment protocol. In early 2019, DALRRD tentatively agreed to the proposed cold treatment protocol and requested a site visit to inspect the production areas and cold storage process. During a September 2020 technical plant health bilateral meeting, DALRRD agreed to allow importation of apples from apple maggot-regulated areas through December 2020.

In 2014, the United States requested market access for blueberries. APHIS and DALRRD are working on pest risk mitigations. During the September 2020 plant health bilateral meeting, DALRRD and APHIS discussed the remaining steps to open the South African market to imports of U.S. blueberries.

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*.)

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 appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

In March 2019, the South African Parliament passed the Copyright Amendment Bill and the Performers' Protection Amendment Bill that contain some needed modernizations 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 that may not meet international standards, such as with respect to overly broad exceptions. In March 2019, the bills passed Parliament and were sent to the South African President for signature. However, the South African President sent the bills back to Parliament citing constitutional concerns in June of 2020, and, as of February 2021, Parliament has not taken action in response. Significant numbers of South African and international stakeholders, particularly in the creative industries, oppose the bills in their current form.

The DTIC released the Intellectual Property Policy of the Republic of South Africa Phase I (IP Policy) in 2018, 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 merits.

SERVICES BARRIERS

Audiovisual Services

The Independent Communications Authority of South Africa (ICASA) imposes local content requirements for satellite, terrestrial, and cable subscription services. Since March 2016, ICASA local content regulations have required 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 B-BBEE, and associated codes of good practice, awards bidding preferences on government tenders and contracts to firms with the requisite levels of company ownership and participation by Black South Africans. 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. It also is 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 that have struggled to score well on the "ownership" element of the scorecard, due to corporate rules that can prevent the transfer of discounted equity stakes to South African subsidiaries. Whereas U.S. firms once balanced lower scores on ownership requirements with higher scores on other elements, 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.

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 2018 Mining Charter, 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 following: the legal standing of the Mining Charter in relation to the Minerals and Petroleum Development Act; the levels of black ownership of mines under 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. As of March 2021, the High Court had not rendered a judgement on the application for review.

Other Investment Restrictions

The Protection of Investment Act of 2015 contains vague language 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 October 2020, the South African Government published a draft land expropriation bill for public comment that would amend South Africa's 1975 Expropriation Act to explicitly allow expropriation of property, including land, without compensation. The National Assembly also established a committee to engage in a parallel process to amend Section 25 of the constitution to explicitly allow for expropriation without compensation. The work of the committee and review of the bill continues.

OTHER BARRIERS

Bribery and Corruption

South African laws designed to increase transparency and reduce corruption in South Africa's Government include 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 continue to strain overall law enforcement capacity and continue to 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 $56.7 billion in 2020, a 112.1 percent increase ($30.0 billion) over 2019. U.S. goods exports to Switzerland were $18.0 billion, up 0.8 percent ($149 million) from the previous year. Corresponding U.S. imports from Switzerland were $74.8 billion, up 67.5 percent. Switzerland was the United States' 18th largest goods export market in 2020.

U.S. exports of services to Switzerland were an estimated $46.8 billion in 2019 and U.S. imports were $25.0 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $86.4 billion in 2018 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $61.0 billion.

U.S. foreign direct investment in Switzerland (stock) was $229.0 billion in 2019, a 9.6 percent decrease from 2018. U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance and insurance.

TRADE AGREEMENTS

The United States–Switzerland Trade and Investment Cooperation Forum Agreement

The United States and Switzerland signed the Trade and Investment Cooperation Forum Agreement on May 25, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Switzerland.

IMPORT POLICIES

Tariffs

Switzerland's average Most-Favored Nation (MFN) applied tariff rate was 6.0 percent in 2019 (latest data available). Switzerland's average MFN applied tariff rate was 32.4 percent for agricultural products and 1.7 percent for non-agricultural products in 2019 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 8.0 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 a broad range of 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 many times higher than the fee for domestic bulls.

Non-Tariff 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 (SPS) 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 SPS measures with those of the European Union (EU), about which U.S. stakeholders have long raised concerns. Switzerland notified the WTO of three new measures and modification of three existing measures through December 2020. Switzerland had 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 currently scheduled to remain in force through the end of 2021.

GOVERNMENT PROCUREMENT

Switzerland is a Party to the WTO Agreement on Government Procurement (GPA). Switzerland deposited its instrument of acceptance for the Revised GPA at the beginning of December 2020. As a result, the revised GPA entered into force for Switzerland on January 01, 2021.

INTELLECTUAL PROPERTY PROTECTION

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. Switzerland was removed from the Watch List in the 2020 Special 301 Report in recognition of copyright legislation that came into force on April 1, 2020, that is intended to address specific difficulties in its system of online copyright protection and enforcement. Although this is an important step after many years of engagement, U.S. copyright holders report that Switzerland remains a host country for websites offering infringing content and the services that support them and have expressed concerns about certain other provisions of the new legislation. The United States is carefully monitoring Swiss Government measures to address copyright piracy in an appropriate and effective manner as well as the implementation, interpretation, and effectiveness of the newly enacted legislation. The United States is also closely following any difficulties right holders may have in enforcing their rights against anonymous infringers for the unauthorized reproduction or publication of copyright-protected works. Finally, the

United States continues to have concerns with respect to copying from unlawful sources and remuneration issues for right holders under the private copy exception in the copyright law.

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

Data Localization

Swiss law restricts 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. 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).

Swiss–U.S. Privacy Shield Framework

On September 8, 2020, the Federal Data Protection and Information Commissioner of Switzerland issued an opinion concluding that the Swiss–U.S. Privacy Shield Framework does not provide an adequate level of protection for data transfers from Switzerland to the United States pursuant to Switzerland's Federal Act on Data Protection. The Swiss action followed a July 16, 2020 judgment by the Court of Justice of the European Union, which declared as "invalid" an earlier European Commission decision on the adequacy of the protection provided by the EU–U.S. Privacy Shield Framework. The Swiss Government had determined in January 2017 that the Swiss–U.S. Privacy Shield Framework provided U.S.-based organizations with a mechanism to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States.

The United States remains committed to working with both the EU and Switzerland to ensure continuity in transatlantic data flows and privacy protection, and remains in close contact with the Swiss Government on this matter.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $29.9 billion in 2020, a 30.4 percent increase ($7.0 billion) over 2019. U.S. goods exports to Taiwan were $30.5 billion, down 2.5 percent ($797 million) from the previous year. Corresponding U.S. imports from Taiwan were $60.4 billion, up 11.4 percent. Taiwan was the United States' 10th largest goods export market in 2020.

U.S. exports of services to Taiwan were an estimated $11.0 billion in 2019 and U.S. imports were $7.4 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $7.8 billion in 2018 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $9.5 billion.

U.S. foreign direct investment in Taiwan (stock) was $17.4 billion in 2019, a 4.8 percent increase from 2018. U.S. direct investment in Taiwan is led by manufacturing, finance and insurance, and wholesale trade.

OVERVIEW

The United States and Taiwan signed a Trade and Investment Framework Agreement (TIFA) in 1994. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Taiwan authorities. 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). Since a TIFA meeting in October 2016, the United States and the Taiwan authorities have held trade and investment related meetings focused on the implementation of past TIFA commitments and on other issues on an ongoing basis.

IMPORT POLICIES

Tariffs

Taiwan's average Most-Favored-Nation (MFN) applied tariff rate was 6.37 percent in 2019 (latest data available). The average MFN applied tariff rate was 15.12 percent for agricultural products and 4.16 percent for industrial products in 2019 (latest data available). Taiwan has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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 area of agriculture. TRQs still cover 16 agricultural products, including rice, peanuts, bananas, and pineapples.

Taiwan has recourse to special safeguards (SSGs) 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. As of March 2021, 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 lowers or eliminates 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. In 2018, as a result of Taiwan's opaque system, 5 percent of the U.S. CSQ (3,134 metric tons) was released to global tender. In 2019, Taiwan filled the U.S. CSQ of 64,634 metric tons, but with 12,000 metric tons of that quota filled with a low-grade specification normally intended for animal feed. In 2020, the CSQ filled by December 1 with no issues to report. While Taiwan has generally observed its CSQ commitments, which call for equal access for U.S. table rice, concerns over rice market access persist, both in terms of quantity and quality of the rice.

Distilled Spirits

Taiwan taxes rice wine for cooking at a lower rate than alcoholic products consumed as beverages. Taiwan taxes distilled rice wine (*mijiu*) at the same, lower rate as rice wine for cooking, even though it is consumed as an alcoholic beverage. The United States and other trading partners continue to express their concerns to the Taiwan authorities that steps should be taken to ensure that imported alcoholic beverages are not taxed at a higher rate than domestically produced alcoholic beverages, including *mijiu*.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

The Ministry of Finance changed Taiwan's *de minimis* threshold, below which import duties are not collected, effective as of January 2018. Those changes affect a wide range of shipments imported into Taiwan. 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 (approximately $100) without frequency restrictions. In 2019 (latest data available), 60.35 million of the total 64.33 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

Taiwan has banned the use of biotechnology food ingredients and processed food with biotechnology ingredients in school meals since December 2015. Through the TIFA mechanism and related meetings, the United States continues to highlight the lack of scientific basis for this ban and urge 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 evaluated in comparison 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.

Organics Regulation

In light of legislation in Taiwan, the United States and Taiwan reached a new organic equivalence arrangement that allows all organic products certified in the United States or Taiwan to be sold as organic in either market, effective May 30, 2020. The arrangement eliminates the need for organic operators to have individual organic certification to both U.S. and Taiwanese standards and thereby avoids a double set of costs for inspections and required recordkeeping. The arrangement applies to specific products that (1) are certified to meet USDA National Organic Program organic standards or Taiwan's organic regulations; and (2) are grown or produced in the United States or Taiwan, or have their final processing or packaging in the United States or Taiwan. It also creates new market access opportunities for U.S. organic livestock and other products, such as alcohol and products made with apicultural ingredients, which previously were not permitted in Taiwan.

Labeling and Other Requirements – Cosmetics

The Act for Cosmetics Hygiene Safety Administration (Cosmetics Act), amending the Statute for Control of Cosmetic Hygiene, went into effect in May 2018. It includes requirements regarding product information registration (for Product Information Files, or PIFs) and good manufacturing practices (GMP). Toothpaste and mouthwash products were added to the products covered.

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. The Taiwan 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 the Ministry of Health and Welfare, the Enforcement Rules went into effect for all defined cosmetics products on July 1, 2019, except for toothpaste and mouthwash, which are subject to a two-year grace period that ends July 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. Manufacturers are required to input product information in the PIF system by July 1, 2021. However, many U.S. manufacturers have encountered technical issues with the portal system and have suggested extending the implementation date to March 2022. 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, and the parts of the body affected. 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.

Notification Programs – Chemical Substances

Taiwan's Occupational Safety and Health Act (OSH Act) and the Toxic Chemical Substances Control Act (TCSCA) 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), the Environmental Protection Agency of Taiwan (EPAT), or both. MOL and EPAT operate two separate registration programs, the Existing Chemical Notification (ECN) program and the New Chemical Notification (NCN) program, respectively.

Amendments to the Regulations for the Labeling and Hazard Communication of Hazardous Chemicals made by Taiwan's MOL became effective in November 2018. U.S. stakeholders are concerned about Article 18 of the regulations, which requires explanations and justifications regarding classification of hazardous chemical ingredients, and seek the flexibility to use a Can Not be Classified (CNC) category.

The amended Toxic and Concerned Chemical Substances Control Act 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. The resulting regulations set stricter requirements for applications criteria for the protection of confidential business information. On June 9, 2020, EPAT issued the first version of the Guidance on Existing Chemical Substance Standard Registration, which covers 106 existing chemical substances.

Country of Origin Labeling – Pork

On January 1, 2021, Taiwan implemented country of origin labeling (COOL) requirements for a range of pork products (including processed products). Taiwan's presentation of these labeling requirements to the public as a means to ensure the food safety of U.S. pork products, while at the same time implementing maximum residue limits (MRLs) for ractopamine in imported pork (*for further information, see Beta-agonists under the Sanitary and Phytosanitary Barriers section*), inaccurately implies that there is a food safety concern with U.S. pork and pork products produced with ractopamine. In addition, given that manufacturers of processed pork products often change the mix of ingredients used for a particular product based on price and availability (as well as the amount of leftovers from the manufacturing of other products), a requirement to change labeling whenever the source of the pork changes could disincentivize Taiwanese manufacturers of processed pork products from purchasing U.S. pork in favor of Taiwanese pork. The United States has raised concerns about these COOL requirements bilaterally with Taiwan, including on the margins of the October 2020 WTO Committee on Technical Barriers to Trade meeting.

Sanitary and Phytosanitary Barriers

Import Bans, Import Licensing and Other Restrictions – Beef and Beef Products

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In 2006, Taiwan began allowing imports of U.S. deboned beef derived from animals under 30 months of age. In October 2009, the United States and Taiwan reached an agreement on a protocol to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, in January 2010, Taiwan's Legislative Yuan adopted an amendment to Taiwan's Food Sanitation Act that bans imports of U.S. ground beef, internal organs, eyes, brains, spinal cord and skull meat for at least 10 years following the last confirmed BSE or variant Creutzfeldt-Jakob disease case. Additionally, the Executive Yuan banned imports of all beef and beef products from cattle 30 months of age and older. 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.

On January 1, 2021, Taiwan lifted the ban on imports of U.S. beef and beef products from cattle 30 months of age and older. Other barriers, including the ban on imports of U.S. ground beef and certain other beef products, remain in place. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, the World Organization for Animal Health (OIE) guidelines, the United States' negligible risk status for BSE, and the 2009 U.S.-Taiwan beef protocol.

Import Bans – Animal Byproducts

Taiwan does not allow imports of U.S. bovine blood products for animal consumption or bulk shipments of U.S. tallow, claiming BSE concerns. The United States continues to urge Taiwan to open its market to these animal byproducts, based on the OIE guidelines.

Maximum Residue Limits – Beta-agonists

In September 2012, Taiwan implemented the Codex Alimentarius Commission (Codex) MRL for ractopamine in imported beef muscle, but did not implement MRLs for ractopamine in other beef products (*e.g.*, offal). On January 1, 2021, Taiwan implemented Codex MRLs for ractopamine in imported pork muscle, fat, and liver. Taiwan also implemented MRLs for ractopamine in imported pork kidney and other edible parts (*e.g.*, offal other than kidney and liver) that are more restrictive than the Codex MRLs. The United States is concerned that the MRLs for imported pork kidney and other edible parts do not reflect consumption exposure. The United States is also concerned that Taiwan's method of testing for ractopamine residue is not aligned with methods of analysis for ractopamine recommended by Codex and could provide inaccurate results. The United States continues to ask that Taiwan align its methods of detection with the standards utilized by countries, in this case Codex.

Apart from ractopamine, Taiwan has also not established MRLs for other beta-agonist compounds or provided science-based rationale to support its policy. The United States continues to urge Taiwan to implement science-based MRLs without undue delay and to accept and approve new applications for MRLs for beta-agonists based on science and in a timely manner.

Maximum Residue Limits – Agrochemicals

Taiwan's slow process for establishing MRLs for pesticides, low number of approved MRLs, and zero tolerance policy for pesticides without established MRLs have resulted in U.S. shipments being stopped at ports of entry and have dissuaded some trade due to the high risk of rejection. The United States will continue to encourage Taiwan to continue to improve the speed, efficiency, and transparency of its MRL regulatory system to facilitate trade.

Tolerance Levels – Potato Products

In September 2017, the 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 often a natural reaction to sunlight, although green coloration can also be a potential indicator of glycoalkaloids. Following U.S. engagement, the Taiwan authorities established a tolerance level for glycoalkaloids, effective November 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.

In 2019 and 2020, Taiwan increasingly rejected shipments of chipping potatoes due to an overly restrictive approach to rot, mold, and sprouting. This situation has become an increasing 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 these potato issues with the goal of reaching an agreement on an appropriate and trade-facilitating response.

GOVERNMENT PROCUREMENT

Amendments to the Government Procurement 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 Government Procurement 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 in 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. The Government Procurement Act also shortens the ban period for the violation of procurement regulations to between three months and one year, depending on the number of prior violations within the past five years.

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 the Copyright Act to combat illicit streaming devices, and amendments to the Trade Secrets Act to protect trade secrets during criminal investigations. However, more comprehensive copyright legislation remains stalled, and considerable challenges remain in combatting copyright and related infringement, particularly with respect to online piracy.

Implementing regulations for the December 2017 Amendments to the Pharmaceutical Affairs Act went into force in August 2019, establishing a new mechanism for early resolution of potential patent disputes that included coverage for biologics. This mechanism represents a promising step forward for Taiwan in its efforts to develop an innovative pharmaceutical sector. At the same time, right holders have raised concerns that TFDA is excluding patents for new doses, new dosage forms, and new unit strengths from this system. The United States will continue to monitor the implementation of this new mechanism.

Following trade and investment discussions in 2018, the United States and Taiwan agreed to a Digital Anti-Piracy Work Plan (the Work Plan). Leading up to, and as a result of, 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, 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 TIPA signed a voluntary cooperation agreement in July 2019.

In May 2019, Article 87.1.8 and Article 93 of the Copyright Act were amended to combat the use of illicit streaming devices. However, right holders report that online piracy remains widespread. The Notorious Markets List identified DYTT8, which appeared to be hosted in Taiwan, as a popular non-English torrent site providing links to unauthorized content.

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 regarding the same articles 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 that were 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. While it is still early in the availability of this new authority, these changes are expected to improve Taiwan's ability to effectively prosecute cases of trade secrets theft.

The National Communications Commission (NCC) announced the draft of the Audio-Visual Services Management Regulations in July 2020, with a stated purpose of combating illegal over-the-top operations. U.S. stakeholders and local industries are concerned that the draft regulations require unnecessary and onerous disclosures of confidential business information, including customer volume, business revenues, and proportion of self-made or co-produced programs. As of March 2021, the NCC has not finalized the draft regulations.

SERVICES BARRIERS

Financial Services

Securities Services

Taiwan's Financial Supervisory Commission (FSC) provides preferential licensing procedures for foreign trust fund companies that meet FSC's localization standards. The FSC lowered the ceiling for Taiwan investors' share of an offshore fund from 70 percent to 50 percent and to 40 percent in some cases in 2014. The lower ceilings apply if the offshore fund does not meet certain qualifications for the preferential management scheme, such as establishing a local presence, investing an average of NTD 4 billion (approximately $127.5 million) in onshore funds, and recruiting a certain number of Taiwanese staff. The 70 percent ceiling remains for offshore funds that meet the preferential management scheme standards. Nine offshore funds met these criteria in 2020 and are entitled to preferential treatment until September 2021. Preferential treatment of offshore funds is subject to annual review and approval.

Cloud Services

In February 2019, FSC issued a draft amendment to the Regulation Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation, the first management guidance on the use of cloud computing services by financial institutions. The draft amendment included several requirements that would make it difficult for financial institutions to use cloud computing services, including encryption key management and onshore data storage. After holding two public hearings to solicit comments from financial institutions and cloud services providers, FSC removed these requirements from the draft amendment.

After FSC issued the final amendment in September 2019, U.S. cloud computing service companies continued to express concerns. The amended regulation instructs financial institutions to obtain FSC's permission prior to using cloud computing services. One of the concerns relates to the burdensome application process that a financial institution must undergo in order to obtain FSC permission to use cloud

computing services. The application requires submitting up to 17 documents and a lengthy review process, which may discourage financial institutions from using cloud computing services.

Telecommunications Services

With respect to companies operating cable radio 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. For wireless and wire line telecommunications companies, the combined direct and indirect foreign ownership limit is 60 percent, with a direct investment limit of 49 percent. Separate rules exist for Chunghwa Telecom, a legacy carrier that is partially owned by the Taiwan Ministry of Transportation and Communications and controls 92.4 percent of the fixed line telecommunications market in Taiwan. Total direct and indirect holdings by foreign investors in Chunghwa Telecom 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 direct ownership 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 March 2021, the proposed amendments were still pending final approval in the Legislative Yuan.

Regulatory and legislative scrutiny of select investments on grounds unrelated to national security 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 areas 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. Taiwan began the pilot drug expenditure target (DET) program in 2013, which was an improvement over the less predictable price volume survey (PVS) system. U.S. stakeholders have expressed concerns over

the DET program's inconsistent treatment of different forms of patented drugs with respect to price adjustments and the calculation of annual drug expenditure targets.

In response to stakeholders' requests, the National Health Insurance Administration (NHIA) continued the DET program for 2020 and will decide whether to extend it in 2021. The 2019 target budget was set to be NTD 162.31 billion (approximately $5.4 billion). However, because the actual drug expenditure in 2019 was NTD 167.83 billion (approximately $5.66 billion), NHIA announced price cuts for 7,237 drug items and price increases for 78 items, effective October 1, 2020. U.S. stakeholders have recommended that NHIA improve the DET program and its overall pricing system, including by addressing the mechanism of providing drug-price discounts to hospitals (the so-called R-zone system), re-establishing the DET formula, and addressing the inefficient reimbursement timeline.

Medical Devices

Taiwan is a significant market for U.S. medical device exports. In January 2020, Taiwan passed its first Medical Devices Act, after which TFDA began issuing regulations to implement provisions of the Act. However, longstanding concerns persist over Taiwan's systems for medical device product license approvals and pricing review mechanisms. 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, TFDA requires U.S. Food and Drug Administration (FDA) medical device Establishment Inspection Reports (EIRs) that are submitted by U.S. manufacturers in lieu of other documentation to have been issued within the last three years. Because FDA conducts facility inspections using a risk-based approach, rather than at regular intervals, only a small fraction of U.S. manufacturers are able to produce the EIR documentation required to qualify for Taiwan's simplified review. The United States has encouraged the adoption of audits performed under the International Medical Device Regulatory Forum's Medical Device Single Audit Program, instead of the FDA EIRs, as it would simplify procedures.

In Taiwan, self-pay options are available for 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. According to U.S. stakeholders, hospitals that ask patients to self-pay for devices without a code are subject to administrative penalties by NHIA. NHIA began assigning temporary self-pay codes in April 2014, but requires a review of new therapeutic procedures for which the medical device is used. U.S. stakeholders have raised concerns that increased process transparency and faster issuance of temporary self-pay codes are needed to accelerate patient access to new devices.

Another concern relates to the implementation of NHIA's new policy to reduce the items in the self-pay category, under Article 52-4 of the National Health Insurance Act introduced in January 2020. By implementing this policy, NHIA has begun moving medical devices from the self-pay category to the balance billing category with ceiling prices. Transparency and due process will be critical as this process moves forward, and 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

The mandatory notice-and-comment period was extended in 2016 from 14 days to 60 days for proposed laws and regulations originating in executive agencies that relate to trade, investment, or intellectual property rights. Article 154 of the Administrative Procedure Act provides an exemption from the comment requirement and the flexibility of a shortened comment period where there is an urgent need of legal implementation. According to the National Development Council, there were 1,207 draft regulation

preannouncements in 2020. About 62 percent of these preannouncements had a 60-day comment period, while 11 percent had a comment period of 30 to 60 days, and 18 percent had a comment period of 14 to 30 days.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $26.4 billion in 2020, a 31.2 percent increase ($6.3 billion) over 2019. U.S. goods exports to Thailand were $11.2 billion, down 16.0 percent ($2.1 billion) from the previous year. Corresponding U.S. imports from Thailand were $37.6 billion, up 12.4 percent. Thailand was the United States' 25th largest goods export market in 2020.

U.S. exports of services to Thailand were an estimated $3.4 billion in 2019 and U.S. imports were $2.5 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $6.0 billion in 2018 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $202 million.

U.S. foreign direct investment in Thailand (stock) was $17.7 billion in 2019, a 4.6 percent increase from 2018. U.S. direct investment in Thailand is led by manufacturing, wholesale trade, and depository institutions.

TRADE AGREEMENTS

The United States–Thailand Trade and Investment Framework Agreement

The United States and Thailand signed a Trade and Investment Framework Agreement (TIFA) on October 23, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Thailand.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Thailand's average Most-Favored-Nation (MFN) applied tariff rate was 10.2 percent in 2019 (latest data available). Thailand's average MFN applied tariff rate was 29.0 percent for agricultural products and 7.2 percent for non-agricultural products in 2019 (latest data available). Thailand has bound 75.2 percent of its tariff lines in the World Trade Organization (WTO), with an 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, 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.

Taxes

Wine imports are subject to a 54 percent tariff and six different taxes; taken together, the effective duty and tax burden is nearly 400 percent. Industry has raised concerns about the punitive import tariffs on wine and disparate *ad valorem* taxes that appear to favor domestic white liquor.

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 kg (approximately $215 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kg (approximately $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, the Department of Livestock and Development (DLD) has discretionary authority to increase these import fees up to five-fold.

Non-Tariff Barriers

Import Licensing

Import licenses are required for the importation of many raw materials, petroleum, industrial machinery, textiles, pharmaceuticals, firearms and ammunition, 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 (TRQs), including soybeans and soybean meal. Thailand also imposes a domestic purchase requirement on importers of feed wheat, which is not subject to a TRQ.

Customs Barriers and Trade Facilitation

Thailand provides incentives to customs officials who initiate investigations or enforcement actions. Thailand is one of the only major trading partners of the United States that still has such an incentive system, which has been a cause of concern for many years among Thailand's trading partners due to the potential for corruption and the cost, uncertainty, and lack of transparency associated with the customs penalty/reward system. Ostensibly to address these problems, at least in part, Thailand amended the Customs Act in 2017. The amendment caps incentives at 20 percent of the sale price of seized goods (or of the fine amount) with a cap of THB 5 million (approximately $150,000). The amendment also limits post audit inspections to five years from the date of import or export. While a welcome development, the reduction of this remuneration is insufficient to address the issue of personal incentives.

In September 2019, the Customs Department held public consultations soliciting comments on the customs penalty/reward system. The Customs Department is considering 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 and feed ingredients (such as, pork, cooking oil, wheat flour, feed wheat, distillers dried grains with solubles (DDGs), and feed quality barley), liquefied petroleum gas, and sound recordings. The controlled list is reviewed at least annually, but the price-control review mechanisms are non-transparent. In practice, the Thai Government influences prices in the local market through its control of state monopoly suppliers of products and services, such as in the petroleum, oil, and gas industry sectors.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements on Alcoholic Beverages

Thailand's Office of Alcohol Control oversees regulations 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 clear definitions and interpretation of the 2016 and 2017 guidelines has created difficulties in implementing and enforcing the rule. Thailand notified the United States in 2019 that it would issue a third revised guidance but has yet to do so.

Import Regulations on Alcohol Certificate of Analysis

On June 18, 2019, Thailand's Finance Ministry began implementing a new "Ministerial Notification on Importation of Spirits into the Kingdom of Thailand, BE 2560." This measure requires an alcohol certificate of analysis (COA) or product-sample test to obtain an import permit. Although Thailand has a waiver provision to recognize certificates from private laboratories employing U.S. Alcohol and Tobacco Tax and Trade Bureau 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 United States raised concerns regarding Thailand's certificate of analysis in the November 2019 and February 2020 WTO Technical Barriers to Trade Committee meetings.

Agricultural Biotechnology

While Thailand's regulations prohibit the cultivation of genetically engineered (GE) crops, they allow imports of processed food containing GE ingredients, GE cotton lint, and GE soybeans and corn for feed and industrial uses.

On July 5, 2019, Thailand notified the WTO of a draft GE food notification regulation. The draft regulation remains open for public hearings and feedback. 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 processed foods containing GE organisms and microorganisms into Thailand. The United States has submitted comments to the WTO on this notification.

The Ministry of Natural Resources and Environment (MONRE) held public hearings on the revised draft of the Biodiversity Act in early 2020. The Biodiversity Act includes biosafety regulations covering research, field trial, and commercialization of genetically engineered plants, animals, and microorganisms. MONRE anticipates the act will be submitted to the Cabinet for approval in 2021. The draft Biodiversity Act's definition of biosafety covers access to biological resources, fair and equitable sharing of benefits arising from utilization of biodiversity, and the Cartagena Protocol on Biosafety's provision on living modified organisms' effects on biodiversity.

Sanitary and Phytosanitary Barriers

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), to Type 4 toxic substances, 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 Limit (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. The ban on the domestic use of paraquat and chlorpyrifos has been in force since June 1, 2020.

On November 2, 2020, the Ministry of Public Health published notification of its decision to ban paraquat and chlorpyrifos in imported food products, effective June 1, 2021, effectively lowering the MRLs to the Limit of Detection (LOD). The LOD for both paraquat and chlorpyrifos will apply to three food categories: (1) food grains; (2) fresh vegetables and fruits; and (3) meat, milk, and eggs. Imported products that contain residues below the current MRLs of these chemicals can continue to be imported until the regulation goes into effect.

Audits of Facilities for Imports of Animal-Derived Products

DLD lists seven animal-derived products, including meat, meat and bone meal, and feather meal, importation of which is subject to a facility audit in the exporting country. Each audit approval is valid for five years. In addition, DLD imposes 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 recommended that Thailand adopt a systems approach on audits to reduce the expense and burden of this requirement. While a systems-approach audit for U.S. animal protein products was planned for 2020, DLD has yet to provide the United States Department of Agriculture with the information required to prepare for the audit.

Import Restrictions on Beef and Beef Products

Thailand restricts beef offal imports. DLD confirmed that fresh tongues, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are categorized as muscle cuts and are thus permissible. 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. In its report, DLD notably requested confirmation that U.S. beef and beef products for export to Thailand are not derived from cattle treated with beta-agonists, including ractopamine, a condition that would potentially bar entry of U.S. beef offal into the Thai market.

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.

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, including the United States. However, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In 2019, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine. However, due to lack of progress on the issue, in October 2020, the U.S. Government revoked approximately one-sixth of Thailand's duty-free trade preferences under the U.S. Generalized System of Preferences program.

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 in the United States. The ban applies to all such U.S. products, notwithstanding World Organization for Animal Health 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 has not yet informed the United States of the audit's outcome.

GOVERNMENT PROCUREMENT

The Public Procurement Act is the primary legal authority governing public sector procurement. The act applies to the national and local governments but excludes public-private partnership projects, state-owned enterprises listed on the stock exchange, and military units. The act allows for consideration of factors other than cost in procurement decisions, including performance-based procurement (*i.e.*, life-cycle cost analysis). Due to insufficient training and the large number of appeals of performance-based awards, most agencies, in practice, default to a lowest-cost procurement methodology.

Thailand introduced a 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. The Innovation List grants special government procurement privileges for such products. Thai Government agencies and public hospitals must allocate at least 30 percent of their budgets for pharmaceutical products, medical products, and nutritional supplements on this list. More than 200 products, all of which are generic, are included on the list.

Thailand is not a Party to the WTO Agreement on Government Procurement (GPA), 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 Special 301 Report. Concerns remain even as Thailand continues to make progress on intellectual property (IP) protection and enforcement, including by improving coordination of enforcement efforts to combat trademark counterfeiting and copyright piracy

and by taking legislative and administrative steps to address backlogs for patent and trademark applications. Although the sale of counterfeit goods in physical markets, including Patpong Market in Bangkok, have decreased in 2020 due to the impact of the COVID-19 pandemic and travel restrictions, the United States remains concerned about the availability of counterfeit and pirated goods in Thailand, both in physical markets and online. Other U.S. concerns include online piracy by devices and applications that allow users to stream and download unauthorized content, overly broad technological protection measure exceptions, unauthorized camcording, unauthorized collective management organizations, the widespread use of unlicensed software in both the public and private sectors, the backlog in pending pharmaceutical patent applications, and extensive cable and satellite signal theft. While the Department of Intellectual Property has drafted amendments to the Copyright Law and Patent Act that could address some concerns, the Thai Parliament has yet to adopt the amendments. The United States will continue to monitor these issues.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to 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 authorizes Thailand's Film Board to establish ratios and quotas limiting the importation of foreign films. The Film Board had not exercised this authority as of March 2021. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Express Delivery

The Postal Service Act gives Thailand Post a legal monopoly on delivering letters and postcards up to two kilograms. Private express delivery companies must pay a fine up to THB 20 per item (slightly less than $1) for delivery of documents and shipments up to two kilograms in Thailand. 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 for new foreign banking operations only sporadically. Thailand has not held a round of applications for new licenses since 2013, when Thailand granted new subsidiary licenses to two foreign banks. In addition, Thailand may grant new foreign banking licenses to banks from certain countries, conditioned on reciprocal treatment offered to Thai banks. Under this program, Thailand has offered foreign banking licenses to banks from Association of Southeast Asian Nation (ASEAN) countries under the ASEAN Banking Integration Framework.

Under the Bank of Thailand's Financial Institution Business Act, foreign bank branches and subsidiaries can supply all types of financial services offered by local banks. In 2018, the Bank of Thailand expanded the types of service points allowed for foreign bank operations to include physical branches, off-premise ATMs, and appointed agents. Foreign subsidiaries may operate up to 40 service points, while foreign branches may open a maximum of three service points.

Foreign investors are authorized 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 in-country processing of all domestic retail debit electronic payment transactions for debit cards issued in Thailand. This requirement means foreign suppliers are precluded from supplying these services across borders and must establish a local presence and build processing facilities in Thailand. When a card is accepted on more than one network, at least one of those networks must be a domestic debit card network. Under the 2016 Thai Bank Chip Card Standard, the Bank of Thailand requires financial institutions that issue debit cards to issue cards with local-standard chips. Merchants and financial institutions are required to have equipment that can accept local-standard chips.

Foreign equity in life and non-life insurance companies is initially limited to less than 25 percent of the total number of voting shares that have been sold. Foreign directors may hold no more than 25 percent of the initial board of director seats. The Thai Government allows a company to increase the foreign equity in the company 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, the Ministry of Finance, with the recommendation of the Office of Insurance Commission, may permit a company to have foreign ownership exceeding 49 percent, or foreign directors comprising more than one-half of the board, or both, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector.

Professional Services

Legal Services

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. U.S. persons may own interests in law firms in Thailand only if they enter into commercial association with local attorneys or local law firms.

Accounting Services

The 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 certain 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

The National Cybersecurity Act (CSA) 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, or NCA) broad powers to monitor, test and seize computer systems and demand confidential and sensitive information without sufficient protections to circumscribe such access. U.S. stakeholders have raised further concerns that the law gives NCA broad powers to enter premises and to monitor, test, freeze, or seize computers without sufficient protections or opportunities to appeal. The NCA was officially formed on January 1, 2021 with the appointment of a Secretary General,

In May 2020, the Thai Government issued a royal decree to postpone until May 31, 2021, the enforcement of most sections in the Personal Data Protection Act. The deferral will provide more time for businesses to prepare for complying with the new legislation. 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 (approximately $158,000). 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 overly broad powers to the PDPC and Expert Committees.

Internet Services

Thailand's Computer Crime Act provides the government expansive authority to regulate online content. A "Computer Data Filtering Committee" has 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 a Committee decision.

The Computer Crime Act raises particular concerns for online services that host non-IP-protected, user-generated content. The Act establishes a liability shield for online service providers with respect to non-IP-protected, user-generated content if they 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-protected, user-generated content, and, as a result, discourages investment and encourages proactive censorship or filtering of user posts.

On the other hand, some U.S. stakeholders note the Computer Crimes Act has improved the environment for enforcement against online piracy with respect to copyright-protected content.

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 at least 50 percent of total shares) must obtain an alien business license from the Ministry of Commerce's Department of Business Development or other relevant ministry or regulator, such as the Bank of Thailand, before commencing business in a sector restricted by the FBA. Although the FBA prohibits majority foreign ownership in many sectors, U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are exempt. Nevertheless, the privileges under the AER do not extend to U.S. investments 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

In general, U.S. stakeholders have expressed concern that Thai Government processes for revising laws and regulations affecting trade and investment lack consistency or transparency.

U.S. stakeholders have also 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 National 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 and predictability.

In 2019, Thailand passed B.E. 2562, which further amended the 2008 Medical Devices Act, B.E. 2551. According to industry stakeholders, Thailand will need to finalize approximately 70 sub-regulations to implement B.E. 2562 by spring 2021. The Thai Food and Drug Administration has issued and implemented many of the sub-regulations without adequate notice and opportunity for comment by industry stakeholders, creating uncertainty whether U.S. companies have enough time to comply with the multitude of announced and forthcoming changes. The U.S. Government intends to engage with Thai Government officials on this topic to ensure a smooth transition to the new regulatory regime so that Thai patients can benefit from innovative U.S. medical devices.

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 independent body vested with powers and duties to counter corruption in the public sector. The NACC is responsible for investigating and prosecuting corruption involving high-ranking government officials and politicians. The Public Sector Anti-Corruption Commission under the Ministry of Justice investigates and prosecutes corruption cases involving lower-level government employees. While several agencies have jurisdiction over corruption issues, 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. Anti-corruption mechanisms continue to be employed unevenly and for political purposes, and the lack of transparency in many administrative procedures serves to facilitate corruption.

In 2018 a new anticorruption law repealed and replaced the 1999 Organic Act on Countering Corruption and its various amendments. The new anticorruption law, the "Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption," maintained a key provision criminalizing bribe-giving by legal entities but expanded the definition of legal entities to include any foreign company (registered abroad but operating in Thailand) and its associated persons (employees, joint venture partners, agents, *etc*.). Mandatory fines for bribery must be equal to or up to double the amount of the benefit received from the corrupt act. The 2018 law also allows NACC to seek international cooperation in investigations.

The Comptroller General's Integrity Pact program seeks to deter corruption in public procurement in Thailand. Projects covered under the Integrity Pact since 2015 are subject to third-party monitoring by the independent NGO Anti-Corruption Organization of Thailand.

TUNISIA

TRADE SUMMARY

The U.S. goods trade deficit with Tunisia was $135 million in 2020, a 1,361.2 percent increase ($126 million) over 2019. U.S. goods exports to Tunisia were $434 million, down 5.8 percent ($27 million) from the previous year. Corresponding U.S. imports from Tunisia were $569 million, up 21.1 percent. Tunisia was the United States' 93rd largest goods export market in 2020.

U.S. foreign direct investment in Tunisia (stock) was $320 million in 2019, a 6.0 percent increase from 2018.

TRADE AGREEMENTS

The United States–Tunisia Trade and Investment Framework Agreement

The United States and Tunisia signed a Trade and Investment Framework Agreement (TIFA) on October 2, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Tunisia.

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 an 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 including consumer goods, such as washing machines and video monitors. In addition, certain products that had been duty-free 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. All imported goods are also subject to a customs administrative fee amounting to three percent of the total duties paid on the import.

Non-Tariff Barriers

Tunisia maintains a number of non-tariff barriers. Approximately three percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Ministry of Trade and Export Development. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods must request an allotment from the Tunisian Government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade and Export Development. 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 of documents to the importer's bank 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.

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 up 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 customs 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 56 companies in 2019 to 79 companies as of March 2021.

In February 2017, Tunisia ratified the WTO Trade Facilitation Agreement (TFA) and presented its instrument of ratification to the WTO in July 2020. In 2019, Tunisia self-designated an implementation schedule for each obligation under the TFA. Tunisia is overdue in submitting two transparency notifications related to: (1) import, export, and transit regulations (Article 1.4) and (2) 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 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 2019, Tunisia's Parliament passed the Food and Feed Safety Law; however, it is not yet in effect and there is no known timetable for implementation. Once fully enacted, the law will repeal and replace a number of food and feed safety regulations.

SUBSIDIES

Industrial 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, a state fund managed by the Export Promotion Center, provides financial support to Tunisian resident exporting companies. This fund partially finances a range of promotional actions in target countries, with preferential treatment of 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.

Tunisia does not regularly notify its agricultural domestic support and export subsidy outlays to the WTO.

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, the 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. 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 incorporated in Tunisia (and receiving most of its revenues from operations in Tunisia) operating in the telecommunications, information technology, education and academia, advice or 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 $366) in annual purchases, while companies are limited to 10,000 dinars (approximately $3,663).

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.

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. At the time the decree was adopted, the government announced plans to shorten the list of sectors requiring authorization within three years but has taken no action to date and there is no clear timeline for progress.

ANTICOMPETITIVE PRACTICES

State-owned enterprises (SOEs) maintain monopolies in key economic sectors considered sensitive by the government, such as transportation and distribution of water and electricity. 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 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 $1.0 billion in 2020, a 68.5 percent increase ($410 million) over 2019. U.S. goods exports to Turkey were $10.0 billion, down 0.3 percent ($25 million) from the previous year. Corresponding U.S. imports from Turkey were $11.0 billion, up 3.6 percent. Turkey was the United States' 27th largest goods export market in 2020.

U.S. exports of services to Turkey were an estimated $4.2 billion in 2019 and U.S. imports were $2.0 billion. Sales of services in Turkey by majority U.S.-owned affiliates were $4.6 billion in 2018 (latest data available), while sales of services in the United States by majority Turkey-owned firms were $143 million.

U.S. foreign direct investment in Turkey (stock) was $3.3 billion in 2019, a 14.6 percent decrease from 2018. U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and depository institutions.

TRADE AGREEMENTS

The United States–Turkey Trade and Investment Framework Agreement

The United States and Turkey signed a Trade and Investment Framework Agreement on September 29, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Turkey.

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 Most-Favored-Nation (MFN) applied tariff rate was 10.0 percent in 2019 (latest data available). Turkey's average MFN applied tariff rate was 42.3 percent for agricultural products and 4.5 percent for non-agricultural products in 2019 (latest data available). Turkey has bound 50.5 percent of its tariff lines in the World Trade Organization (WTO), with an 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 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 announced on April 18, April 20, May 20 and June 28, 2020, decisions to impose additional temporary import tariffs between 2 percent to 50 percent for more than 4,000 products. The extra import duties, which were originally scheduled to be lifted by the end of September 2020, have been extended indefinitely. None of the additional tariffs exceed Turkey's WTO bound tariff rates. These additional duties will not be applied to imports originating from the EU, European Free Trade Association (EFTA), and other countries which have preferential trade agreements with Turkey.

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 on U.S. products, in retaliation against the March 2018 decision 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 U.S.-originating goods, including a 60 percent tariff on passenger cars and parts, a 70 percent tariff on alcoholic drinks, a 30 percent tariff on leaf tobacco, and a 10 percent tariff on wood products and tree nuts.

Turkey continues to maintain high tariff rates on many imported food and agricultural products. Tariffs on fresh fruits range from 60 percent to 146 percent, while the range for poultry tariffs is between 23.5 percent and 135 percent. For a number of commodities in high demand, however, the government in recent years has made certain allowances for duty free imports. Beginning in 2018, Turkey established zero tariff-rate quotas (TRQs) on wheat, barley, and corn, later adding pulses and rice. The quota amounts authorized for Calendar Year (CY) 2021 are the same as for CY 2020 and allow for duty-free 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. The Turkish Government executes these TRQs through the Turkish Grain Board (TMO), a government entity which actually imports the commodities duty free through publication of purchase tenders. However, on December 17, 2020, after exceeding the previously delineated quotas for 2020 and facing domestic shortages, the government declared that tariffs on all wheat (45 percent), barley (35 percent), and corn (25 percent) imports would be eliminated through April 30, 2021. Additionally, through April 30, 2021, tariff rates on rice (36-45 percent) will range from 10-15 percent and the tariff on lentils (19.3 percent) will be 9 percent. Due to the current ability of private commercial companies to import these commodities while paying reduced or zero tariffs, TMO has not needed to import commodities through the TRQ process in the early months of 2021.

Taxes

On August 30, 2020, Turkey increased its special consumption tax (OTV) on mid-range and luxury automobiles, but also increased the minimum thresholds at which the duty is imposed. The minimum thresholds for a car with an engine volume of less than 1600 cc increased from TL 70,000 (approximately $10,086) to TL 85,000 (approximately $12,248). OTV taxes on autos with an engine capacity above 1,600 cubic centimeters (cc), which represent the majority of Turkey's imports, were raised from 60 percent to 80 percent. For electric autos with a capacity or the equivalent of more than 2,000 cc, the rate was raised from 100 percent to 130 percent, and the tax on all luxury vehicles increased from 160 percent to 220 percent. The value-added tax (VAT) on all auto purchases remained unchanged at 18 percent.

Non-Tariff 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 many imports are onerous, inconsistent, and non-transparent, often resulting in shipments delayed at Turkish ports. U.S. exporters of certain industrial goods, and of food products such as rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns with decisions by Turkish customs authorities on the valuation of some of their products. In order to resolve legal challenges to reference price overvaluation on certain imports, the Ministry of Trade in March 2020 expanded its mandatory exporter registration process to a list of 31 agricultural commodities, including almonds, walnuts, peanuts, peanut butter, tea, garlic, bananas, fresh peppers, flaxseed, rapeseed, and sunflower seed products. U.S. exporters of tree nuts are especially affected by this new requirement.

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 to the Turkish Government that it accelerate the timeframe for market access approval. In response, since 2016, the MOH has authorized parallel submission (rather than sequential submission) of GMP inspection and marketing approval applications for MOH-designated "Priority One" pharmaceuticals imported from U.S. and EU firms. While a positive step, the MOH to date has shown no willingness to apply this approach to all pharmaceutical product applications.

Cosmetics

In December 2018, Turkey issued a notice for comment on draft amendments to its cosmetics regulation. The proposed changes were substantive, including requirements that companies submit confidential

business information and potential trade secrets, not typically required for cosmetics market authorizations. Turkey then implemented these changes in its online cosmetics registration system, without notifying the draft amendments to the WTO or publishing the final regulation. U.S. industry has expressed concern that Turkey has not provided clarity in the amended regulations as to how it will protect companies' trade secrets. In addition, Turkey introduced a public database, which includes reproducible files of cosmetics product labels and other information of potential use for counterfeiters.

During 2020, the United States continued to raise concerns with Turkey bilaterally and at the WTO Committee on Technical Barriers to Trade (TBT Committee) requesting that Turkey suspend implementation of the measure, notify the draft amendments, and conduct additional public consultations. In December 2020, Turkey published an updated draft amendment to its cosmetics regulation and a new notice for comment. U.S. industry has indicated that the updated amendment represents a positive change and may help to avoid creation of unnecessary obstacles to trade. Turkey has informed the United States that, once the current domestic public comment period is complete, it intends to notify the updated amendment to the WTO TBT Committee with a 60-day comment period. Turkey has also informed the United States that it will delay implementation of the amended regulation until interested stakeholders have had an opportunity to comment and it has taken those comments into account.

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 presence of biotechnology products exceeds a certain threshold. Turkey claims that the requirement for such labeling addresses public health issues, and its Biosafety Law also requires that genetically modified organism labels on certain food products include health warnings. However, the Turkish Government has provided no scientific evidence for requiring these health warnings.

In addition to these requirements, the Biosafety Law 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 Measures prior to its original enactment, the Turkish Government has failed to notify subsequent revisions of the law, its implementing regulations, or its various regulatory controls. U.S. agricultural biotechnology developers have expressed reluctance to seek regulatory approvals in Turkey for individual biotechnology products due to onerous liability requirements imposed by the Biosafety Law, unclear procedures for the assessment required to receive approval, and concerns regarding the protection of applicants' confidential information.

Following the Turkish Government's move to an Executive Presidency system in 2018, the Biosafety Board established under the Biosafety Law was abolished. The authority for biotechnology approvals now rests with the Ministry of Agriculture and Forestry, which grants final approvals after a product is considered by a Risk Assessment Committee and a Socio-economic Assessment Committee under the Ministry's Agricultural Research and Policies Directorate General (TAGEM). The former Biosafety Board rejected applications submitted by Turkish importers for approval of a number of corn and soybean biotechnology products without providing scientific justification. No agricultural biotechnology products have been approved for food use or cultivation. The lack of approvals for new agricultural biotechnology products

from August 2017 until 2021 has led to severe market access problems for U.S. exports, with U.S. soybean shipments to Turkey falling to effectively zero. On February 27, 2021, the Turkish Government approved five biotechnology products, which included reapproval of three soybean products that expired January 26, 2021, as well as one new soybean, and one new corn product. The Ministry of Agriculture and Forestry subsequently cancelled the approval of five approved corn products set to expire December 24, 2021. As of March 2021, a total of 36 products, of which 10 are soybean and 26 are corn, have been approved for use in animal feed in Turkey. Turkish officials have said they want to keep the total number of approved biotechnology events at this level, without providing justification. Additional applications remain outstanding and have been pending for years, despite the law's official 270-day approval timeline. The Turkish agricultural associations that previously submitted applications for the approval of these events have declined to sponsor their renewals, citing the dysfunctional and non-science-based approval system.

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 agricultural biotechnology product at any level, the cargo is rejected and cannot be used for feed or food. There is an exception to this prohibition for unapproved products with pending approval applications for use in feed; such products 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 products, but it is unclear how this exception is being applied in practice.

Turkey has also imposed onerous and unpredictable testing requirements for agricultural biotechnology in certain U.S. food and feed imports, including wheat, rice and other commodities. Turkish authorities began requiring testing of every shipment of U.S. wheat imports in 2013, following a single detection of an unapproved biotechnology product 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 products, and there is currently no biotechnology wheat in commercial production in the United States. The testing requirements have negatively affected U.S. wheat shipments to Turkey. 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 Ministry of Agriculture and Forestry (MAF) is already discussing Turkey's adoption of a pesticide reduction schedule outlined in the EU's Farm to-Fork Strategy. Additionally, on October 2, 2020, a Turkish court ordered MAF to cancel its regulatory approval of the commonly used herbicide glyphosate due to unproven safety concerns. MAF is currently appealing the decision and has announced no plans to repeal the approval in the interim. However, officials have stated that Turkish policy on this issue will be shaped by EU approvals and the outcome of pending civil liability trials in the United States, rather than on scientific risk assessments.

The importation of live animals and of animal products requires a control certificate from the MAF. 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.

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 recently started submitting overdue updates on domestic support programs to the WTO. In 2018, the update covered subsidies for the years 2001-2009, while in 2019, the update covered subsidies for the years 2010-2013. The United States and other WTO Members continue regularly to raise this transparency and timeliness 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 and wheat products. 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. Although Turkish government procurement law requires government contracting agencies to consider best value pricing, the lowest-cost bids are selected in a majority of 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.

Certain 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 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. In addition, 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.

Similar to military procurement, Turkey's "Industrial Cooperation Program," a regulation implemented in 2018, gives civilian ministries the authority to impose commercial offset requirements in procurement contracts. A foreign company that wins a Turkish government procurement contract may be required to produce a certain percentage locally or with a local partner or transfer technology in order to provide its products and services. The Turkish Government has considered such offset requirements in the transportation, and energy sectors, among others.

INTELLECTUAL PROPERTY PROTECTION

In 2020, Turkey remained on the Watch List in the 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. In addition, the Notorious Markets List notes the Grand Bazaar, Istanbul, as a continuing source of counterfeit products.

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. The 2016 Law on the Protection of Personal Data limits transfers of personal data outside of Turkey unless a company meets certain criteria, including (1) explicit consent from the data subject, (2) approval from the Personal Data Protection Authority (KVKK), or (3) involves a transfer to a country whose data protection regime has been deemed by the KVKK as providing adequate protection for such data (as of yet, Turkey has not published a list of approved countries deemed to provide adequate data protection). Companies based outside of Turkey and relying on the transfer of personal data for their operations may find it difficult to comply with these restrictions. Turkey's data transfer restrictions may result in larger companies being compelled to localize their data in Turkey in order to comply with the law's data protection requirements, which will likely create a barrier to entry for small- and medium- sized businesses and will increase costs for many firms.

In addition, 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 "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 Transport and Infrastructure, 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 Turkish 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), which went into effect in March 2020. The measure introduces a 7.5 percent tax on revenues from digital advertising, digital content sales, and digital platform 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 $2.5 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. 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 June 2020, The Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation into the Turkey's DST over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce. The United States and Turkey held bilateral consultations on this investigation in September 2020. On January 6, 2021, USTR released a Section 301 report (and accompanying Federal Register Notice) that finds Turkey's DST discriminates against U.S. suppliers of digital services, burdens or restricts U.S. commerce, and is unreasonable (due to it being inconsistent with international tax principles).

Social Media Law

On July 29, 2020, Turkey's parliament passed amendments to the Law on the Regulation of Broadcasts via the Internet and Prevention of Crimes Committed through Such Broadcasts (Law No. 5651), otherwise known as Turkey's social media law. The amendments to Law No. 5651, which entered into force on July 30, 2020, requires social media platforms with more than one million daily visits from users in Turkey to appoint a Turkey-based representative and rapidly respond to content removal requests. Penalties for non-compliance include escalating fines, the blocking of advertisement, and bandwidth restrictions. The new legislation also requires user data collected by social media networks to be stored in Turkey.

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 have regressed, foreign investors have become much more cautious. According to balance of payments data from the Central Bank of the Republic of Turkey (CBRT), Turkey attracted a total of $5.6 billion in foreign direct investment (FDI) in 2019 (latest data available), down from $6.7 billion in 2018 and the lowest figure since 2004. Business executives have cited as causes the opacity of government decision-making, lack of investor confidence in the independence of the CBRT, 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.

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," but has not specified dates nor taken any action to implement these further measures.

In 2009, companies negotiated with the MOH to sell their products in Turkey using an exchange rate of 1.95 Turkish lira/1.00 Euro (€) 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 fixed 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.

Delayed Reimbursement by Public and University Hospitals for Medical Devices and Pharmaceuticals

The Ministry of Health has not paid medical device companies (primarily U.S. companies) for equipment sold to public and university hospitals since 2018, with the total debt to industry surpassing $2 billion as of September 2020. Pharmaceutical wholesalers selling to public hospital pharmacies are in a similar situation. In October 2020, the Ministry of Treasury and Finance assumed the debt from the MOH and

offered to reimburse companies in two installments (October 2020 and January 2021) in exchange for accepting a 25 percent discount for medical devices and an 18 percent discount for pharmaceuticals.

UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $533 million in 2020, a 49.6 percent decrease ($526 million) over 2019. U.S. goods exports to Ukraine were $1.8 billion, down 21.8 percent ($515 million) from the previous year. Corresponding U.S. imports from Ukraine were $1.3 billion, up 0.9 percent. Ukraine was the United States' 60th largest goods export market in 2020.

U.S. foreign direct investment in Ukraine (stock) was $596 million in 2019, a 12.0 percent increase from 2018.

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. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ukraine. The last meeting of the United States–Ukraine Trade and Investment Council took place in November 2019 in Kyiv. In this meeting, the delegations explored ways to eliminate trade and investment barriers in order to expand economic opportunities and achievements in both countries. The United States will continue to engage with Ukraine under the TICA and other dialogues to urge Ukraine to take steps to eliminate specific market access barriers, improve the transparency and predictability of Ukraine's regulatory regime, advance the protection and enforcement of intellectual property (IP) rights, and improve the business environment to 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 2019 (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 2019 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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. In 2017, the Government of Ukraine introduced an automated VAT refund system. Through this system Ukraine disbursed approximately UAH 151.9 billion (approximately $5.63 billion) in 2019, and UAH 143.1 billion (approximately $5.3 billion) in 2020. Although this system is a significant improvement over its predecessor, several U.S. companies exporting from Ukraine continue to complain that the State Tax Service delays refunds by several months. Ukraine still owes these firms millions of dollars in outstanding refunds from previous years.

U.S.-owned companies exporting 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 foreign-owned companies in Ukraine, including those owned by U.S. investors, which tend to invest in processed goods

that are further "downstream" in the product value chain. The United States continues to urge Ukraine to repay outstanding VAT arrears and to administer the program in a fair and equitable manner.

In 2018, Ukraine adopted a law permitting VAT refunds for specific crops, including soya and rapeseed, but only to exporters that grow the crops. Stakeholders have raised discrimination concerns with regard to the law's treatment of 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 pressed the Ukrainian Government to rescind this law. In January 2020, the Ukrainian Parliament passed amendments to the Ukrainian Tax Code that eliminated this difference in treatment.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

While Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that Ukraine's State Fiscal Service assigns higher and seemingly inconsistent customs values to imports, including food, agricultural products, and pharmaceuticals, than are reflected in the transaction price as provided in the import documentation. Such practices raise concerns under WTO rules and appear contrary to the Ukrainian law that requires Customs to rely primarily on the transaction price in determining customs value.

Ukraine collects 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.

Ukraine has been working to simplify and streamline the procedures for customs clearance of goods by eliminating several control measures and paper documents. Under this law, the government bodies that issue permits for customs clearance are 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. As of March 2021, only the first of three stages of the single window system are fully operational.

Ukraine ratified the WTO Trade Facilitation Agreement (TFA) on December 16, 2015. Ukraine is overdue in submitting a notification with details of the operation of its single window (Article 10.4.3). This information was due to the WTO on December 31, 2020, according to Ukraine's self-designated TFA implementation schedule.

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 legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Although rudimentary risk-based principles were introduced by Ukraine, testing

continues to be excessive. 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 Assessment Procedures - EU Technical Regulations and Regimes

As part of its Association Agreement with the European Union (EU), including the provisions to establish a Deep and Comprehensive Free Trade Area (DCFTA), 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 negatively affected 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 that 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.

Conformity Assessment Procedures – Agricultural Equipment

In late 2017, Ukraine implemented burdensome testing requirements for U.S. and foreign manufactured agricultural equipment. The requirements included 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 expressed concern about the lack of transparency in the process and has urged the acceptance of international certificates without further assessment in Ukraine. In 2020, Ukraine eliminated the 5-year validity period for type-approval certificates and cancelled the biennial inspection requirements, but continues to require that a conformity assessment body provide type-approval certificates for foreign manufactured equipment. The United States continues to press Ukraine to end the requirements for type-approval certificates.

Product Labelling

U.S. exporters of non-food consumer items (such as personal care products) had expressed concern about Ukraine's labelling law and regulations, most importantly whether Ukraine would accept the international system of units of measurement, which allow the simultaneous usage of Latin, Greek and Cyrillic alphabets on labels on products for the Ukrainian market. In June 2020, the Cabinet of Ministers adopted a resolution permitting the use of the international designation of units of measurement in the labeling of products in Ukraine. Business entities have discretion to make decisions on the sequence of unit designations.

In 2019, Ukraine adopted new requirements for the labeling of food products that closely match EU practices. U.S. stakeholders have raised concerns over possible contradictions in the law and, in particular, whether the new requirements would allow imports from the United States to carry the U.S. standard "per serving" dietary information.

Sanitary and Phytosanitary Barriers

Approved Exporters List

Ukraine maintains a list of foreign establishments eligible to export to Ukraine animal-based products, including live animals, reproductive materials, composite products, animal feed, and seafood. Foreign establishments may be added to Ukraine's list if the facility/farm/genetics center exported to Ukraine between April 4, 2013 and April 4, 2018 (i.e., a historical exporter), or if the establishment is already approved to export to the EU. Ukraine has not published a formal procedure for adding "historical exporters," making the process lengthy and problematic.

If an establishment does not meet Ukraine's listing criteria, such as a new-to-market facility, the establishment must undergo an audit. Ukraine's procedures for individual inspection audits are unclear and cost-prohibitive. As a result, some U.S. establishments will be unable to export to Ukraine until they complete an expensive and time-consuming EU approval process or the United States undergoes a country-wide food safety systems audit. The United States is working with the Government of Ukraine to resolve this issue.

Due to bilateral veterinary certificates, Ukraine accepts shipments of U.S. beef and pork from all U.S. federally inspected facilities, and there is no need for facility registration, including for new suppliers.

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 United States 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.

In 2020, Ukraine adopted several food safety standards that mimic EU standards but appear to lack any appropriate scientific justification. These new Ukrainian standards are related to biological and other contaminants, agrochemicals, veterinary drugs, hygiene requirements, and many others. The U.S. Government is working with the Government of Ukraine to introduce science-based international practices into Ukraine's rule-making process.

Import Certification

In November 2019, Ukraine implemented new import requirements for products of animal origin (Order 553), including live animals, reproductive materials, seafood, composite products, and animal feed. To enforce these new import requirements, Ukraine adopted 72 generic veterinary certificates for the relevant products of animal origin. The certificates capture numerous product-specific requirements outlined in Order 553 that do not appear to be science-based, and that require U.S. regulators to certify that exports are in compliance with "Ukrainian legislation" rather requiring the attestations contained within the certificate itself. Requiring certification to a foreign country's legislation without citing the applicable legislation within the certificate is contrary to international practice. Ukraine has announced that, unless the exporting country and Ukraine have mutually recognized systems equivalence, Ukraine's food safety agency cannot negotiate veterinary certificates that differ from Ukraine's generic forms. If existing bilateral U.S. –

Ukrainian veterinary certificates were no longer recognized and the United States was forced to trade under Ukraine's generic certificates, U.S. exports of the relevant animal-based products could be shut out of the Ukrainian market. The United States continues to work with Ukraine to ensure that market access for U.S. agricultural exports is not disrupted as Ukraine continues to implement its new import regulations.

Agricultural Biotechnology

U.S. industry has raised concerns about many aspects of Ukraine's biotechnology regime. For example, Ukraine's regulatory system for genetically engineered (GE) products is still not fully developed. While Ukraine has adopted biosafety legislation outlining basic principles for governing GE products, it has not yet implemented a regulatory regime for registration of GE products for cultivation or for trade of food and feed as of 2020. Further, cultivation of GE products, by law, is limited to only registered agricultural biotechnology products. As of March 2021, Ukraine's official registry of GE events does not contain any entries. As a result, no GE product can be legally propagated in Ukraine or exported to Ukraine from the United States or any other third country.

In 2019, Ukraine indicated its intent to develop legislation that would introduce a registration system mirroring the EU's strict controls on GE crops. This approach could be used to prevent the production of GE crops in Ukraine. At the same time, the Ukrainian Government announced its intention to begin consultations with interested parties. In December 2020, the Ministry of Economic Development, Trade, and Agriculture issued a draft GE law that adopts a general framework approach, setting only general provisions and assigning relevant ministries to be responsible for specific regulation and/or approval of certain GE events. This approach, utilized in many other countries, leaves the specific mechanisms for the development of GE approval or regulations at the Ministry level. The United States will work with the Government of Ukraine to continue the development of an effective, risk-proportionate GE framework that could lead to enhanced trade and encourage advance notification of upcoming draft GE legislation amendments to the WTO.

Ukraine's commitments on biotechnology under its DCFTA with the EU raise concerns. Ukraine's harmonization of its biotechnology policy to conform to the EU's could result in additional barriers to market access for U.S. exports of biotechnology products. (*For further information on the EU's agricultural biotechnology policies, see the Sanitary and Phytosanitary Barriers section of the EU Chapter of this NTE Report*.) The United States continues to engage with Ukraine to develop a biotechnology regulatory system that meets economic and sustainability goals.

GOVERNMENT PROCUREMENT

Government procurement of goods and services has long been associated with alleged corruption in Ukraine, impeding increased trade and investment in the sector. By most accounts, the public electronic procurement system, ProZorro, which replaced the previous paper tendering process in 2016, has improved transparency and reduced corruption in the procurement process. In addition, since the establishment of the Central Procurement Organization in 2016, the public procurement of medicines has improved but concerns remain centered on the outdated patient reimbursement list that does not consider new products.

In 2020, Ukraine's parliament considered legislation that gives domestic producers preference in government tenders if they can demonstrate at least 30 percent local content. U.S. stakeholders raised concerns that the opaque mechanism for determining the degree of localization could increase the risk of corruption in the procurement process.

Ukraine is a Party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Ukraine remained on the Priority Watch List in the Special 301 Report. This designation reflects the continuing need, despite some progress, to address the inadequate protection and enforcement of IP rights and remedy the related market access barriers to U.S. exports and investment.

In 2017, the United States announced the partial suspension of Generalized System of Preferences (GSP) benefits to Ukraine due to inadequate protection and enforcement of IP. The announcement specifically referenced the importance of improving Ukraine's system for collective management organizations (CMOs). In July 2018, Ukraine enacted legislation that fundamentally reformed its CMO system. In 2019, the United States announced the partial restoration of GSP benefits due to tangible steps Ukraine has taken to reform its CMO regime. The United States will continue to work with Ukraine to assist in the development of a transparent, fair and predictable system for the collective management of copyrights.

Online piracy and trademark counterfeiting remain a significant problem in Ukraine. In 2020, the Cyber Police launched criminal investigations against several major illicit websites. However, as outlined in the Notorious Markets List, both physical and online markets that facilitate significant copyright piracy and trademark counterfeiting continue to operate in Ukraine.

Concerns remain regarding the use of unlicensed software by government agencies. The Cabinet of Ministers adopted a resolution in 2018 requiring government agencies to stop using unlicensed software by the end of 2019. Right holders report that implementation of this resolution over the last two years has been slow. In addition, the U.S. Government will continue to engage with Ukraine regarding implementation of its new patent law, new copyright law reforms, and the operation of the new National IP Agency.

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. In addition, U.S. stakeholders have raised concerns about a recent law that requires dubbing of foreign-language films to be shown on television or through video-on-demand, limits screening of foreign-language films to ten percent of all screenings per month per movie theatre, and applies a 20 percent VAT to the screenings of foreign-language films with subtitles. With respect to cable television, U.S. stakeholders have asserted that a lack of transparency and oversight has allowed cable operators to underreport the number of their subscribers, which allows the operators to underpay for the channels they carry. The United States is working with Ukraine on these issues.

In early 2020, the Ukrainian parliament considered the draft law "On Media Registration and Regulation" mandating that traditional and on-demand content providers meet minimum local- or European-content thresholds, register with Ukraine's National Council of Television and Radio Broadcasting, and submit new content to the Ministry of Culture to ensure it complies with a series of restrictions on materials deemed culturally and politically subversive. However, the current text of the draft law exempts foreign studios, as well as video on-demand providers, from the law's requirements. The U.S. Government is working with the Government of Ukraine to preserve the exemptions for foreign companies.

INVESTMENT BARRIERS

Privatization

The State Property Fund of Ukraine 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. The Ukrainian Government has vowed to implement a series of major privatization reforms, including a dramatic reduction of the number of state-owned enterprises previously 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, leaving only a short list of companies (state-owned entities and strategic infrastructure) to be barred from privatization. The Ukrainian parliament has not yet approved the new list. 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 Ukraine's court system offers little protection from corruption and abuse. Business complaints mainly concern the unlawfulness of law enforcement agencies' actions, abuse of power, corruption, and unlawful pressure.

To address those concerns, the Government of Ukraine has, among other steps, considered forming a single unified body that would replace the notoriously corrupt Tax Police and take over investigation of economic crimes from the State Security Service and the National Police. To that end, the Ukrainian parliament is considering a draft law "On the Economic Security Bureau" related to the creation of a new unified investigative body. However, in its current form, the bill does not fully reflect the recommendations of international stakeholders. Specifically, there are concerns related to the proposed bureau's operational independence and accountability. There is a significant risk that if the draft law is adopted in its current form, the agency will replicate some of the problems of the tax police it is intended to replace and fail to deprive the State Security Service of its economic crime investigative functions.

In another step to address corruption in Ukraine, in June 2018, the Government of Ukraine created the High Anti-Corruption Court of Ukraine (HACC). The court issued its first sentence in October 2019. As of the end of August 2020, the HACC has issued 16 convictions (15 guilty verdicts and one non-guilty verdict) but only eight convictions have been finalized; the rest are currently being appealed. In late October 2020, however, an adverse ruling by the Constitutional Court of Ukraine striking down the asset declaration law has brought into question the future of Ukraine's anti-corruption efforts.

Export Policies

A variety of products remain subject to licensing by the 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 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, some oilseeds (in particular sunflower seed, flaxseed, and linseed), ferrous scrap metal, and raw timber.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was $11.7 billion in 2020, a 25.2 percent decrease ($3.9 billion) over 2019. U.S. goods exports to United Arab Emirates were $14.8 billion, down 26.1 percent ($5.2 billion) from the previous year. Corresponding U.S. imports from United Arab Emirates were $3.1 billion, down 29.3 percent. United Arab Emirates was the United States' 19th largest goods export market in 2020.

Sales of services in United Arab Emirates by majority U.S.-owned affiliates were $9.5 billion in 2018 (latest data available), while sales of services in the United States by majority United Arab Emirates-owned firms were $2.4 billion.

U.S. foreign direct investment in United Arab Emirates (stock) was $17.2 billion in 2019, a 1.6 percent decrease from 2018. U.S. direct investment in United Arab Emirates is led by mining, wholesale trade, and manufacturing.

TRADE AGREEMENTS

The United States–United Arab Emirates Trade and Investment Framework Agreement

The United States and the United Arab Emirates (UAE) signed a Trade and Investment Framework Agreement (TIFA) in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the UAE.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external *ad valorem* tariff of five percent on the value of most imported products, with several 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 an apparent step to protect domestic products. The UAE average MFN applied tariff rate was 4.8 percent in 2019 (latest data available). The UAE average MFN applied tariff rate was 6.2 percent for agricultural products and 4.6 percent for non-agricultural products in 2019 (latest data available). The UAE has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 14.6 percent.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on carbonated drinks (50 percent), energy drinks (100 percent), and tobacco products (100 percent). The UAE began to levy the taxes in October 2017, and in 2019 expanded the tax to include a 50 percent excise tax on all beverages with added sugar except for beverages with naturally occurring sugars. U.S. beverage producers report that

the current tax structure, which also applies to sugar-free carbonated beverages, 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. U.S. beverage producers report that between the implementation of the excise taxes and the outbreak of the COVID-19 pandemic, they observed a 25 percent to 30 percent decline in sales.

In December 2019, the UAE expanded the list of products subject to the excise tax, instituting rates of 100 percent on electronic smoking devices, and 100 percent on liquids used in smoking devices. As of June 2018, the emirate of Abu Dhabi has imposed a 30 percent fee on retail sales of alcoholic beverages.

As of August 1, 2019, the UAE requires manufacturers to place two types of digital tax stamps on tobacco products, including cigarettes, in order to electronically track such products from the manufacturing facility to the end consumer. In May 2020, the Federal Tax Authority postponed the implementation of the ban on supplying, transferring, storing, and possessing water pipe tobacco and electrically heated cigarettes that do not carry digital tax stamps within the UAE from June 1, 2020 to January 1, 2021. As of December 1, 2019, the UAE imposes a minimum tax of $0.11 per cigarette and $0.03 per gram of tobacco.

In 2016, GCC Member States agreed to introduce a common GCC offer value added tax (VAT) of five percent. The UAE began to apply the VAT in January 2018. Exports are eligible for VAT reimbursements on purchases, while imports are subject to a "reverse-charge VAT." Importers collect the taxes on behalf of foreign companies while deducting the same amount from their tax returns. Goods and services in the following industries are VAT-exempt: 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 VAT-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.

Non-Tariff Barriers

Import Bans and Restrictions

The UAE restricts the import of 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 (MOCCAE) issued decree No. 98 banning the import of all waste-derived fuel.

Import Licensing

Only UAE-registered companies, which are required to have at least 51 percent UAE ownership, can obtain licenses to import goods. This licensing requirement does not apply to goods imported into free zones. Import of certain goods for personal consumption also does not require an import license.

On July 14, 2020, the UAE Council of Ministers issued Resolution No. 50 to tighten trade control on dual-use products, and to implement internationally agreed import and export controls for dual-use goods.

Documentation Requirements

The UAE requires that documentation for all non-agricultural products imported from the United States be authenticated by the Embassy of the UAE in the United States, including delivery orders from the shipping or line agents, original supplier commercial invoices, certificates of origin, and packing lists. 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.

In April 2020, the Federal Customs Authority announced measures to unify customs inspection and procedures among all customs outlets throughout the UAE. The UAE also introduced the "Licensed Customs Inspectors / Officers Federal Register" database with information on all customs inspectors in the UAE. The Ministry of Economy announced the "World Logistics Passport (WLP)" to support international trade and overcome non-tariff trade barriers. The WLP links Dubai's Customs World, Dubai Ports World, and Emirates Group with partner countries in an effort to support the "Dubai Silk Road" strategy to enhance trade between free zones and the rest of the UAE.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Conformity Assessment and Marking Requirements

The Emirates Authority for Standardization and Metrology (ESMA) has a mandatory regulatory program, the Emirates Conformity Assessment Scheme (ECAS) to monitor industry compliance with UAE standards for goods to be sold in the country. 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. In addition, obtaining Emirates Quality Mark (EQM) is mandatory for bottled drinking water, natural mineral water and ice for human consumption. The application of ECAS and EQM to these items creates a significant trade barrier for U.S. exporters and producers and duplicates the regulatory system already overseen by MOCCAE.

In January 2020, the UAE Council of Ministers issued Resolution No. 4 outlining: (1) requirements for nutritional labeling; (2) maximum residue limits of pesticides in agricultural and food products; (3) labeling for prepackaged food stuffs; (4) honey standards; and (5) conditions related to food nutrition and health. Resolution 52, issued in July 2020, established a UAE mark for sustainable farming. The resolution mandated importers apply for UAE Mark of Sustainable Farming from ESMA and register with ECAS. According to this resolution, multi-ingredient products must contain at least 95 percent of sustainable ingredients to qualify.

In March 2020, ESMA announced an emergency call (eCall) electronic system requirement for imported vehicles. ESMA confirmed the eCall system was required for all 2021 vehicle models delivered to the UAE market in 2020.

Food Labeling Requirements

In September 2019, the UAE Council of Ministers decided UAE standard number UAE.S 5034:2018 "Nutritional Labelling of Pre-packaged Products as Traffic Light Colors" would change from voluntary to mandatory effective January 1, 2022. This regulatory requirement would impose significant additional costs on importers. Industry and trading partners have requested the UAE Government to harmonize this standard with the related ongoing work of the Codex Alimentarius Commission (Codex).

Halal Regulations

ESMA has supervised halal certification and registration since 2017. In June 2019, the UAE notified the WTO Committee on Technical Barriers to Trade (TBT Committee) of a draft update to the "UAE Animal Slaughtering Requirements according to Islamic Rules." The draft technical regulation included requirements that would be challenging in commercial practice and lead to additional costs. The regulation was notified without a proposed date of implementation and the United States submitted official comments on the notified measure. U.S. industry remains concerned that implementation of the regulation may negatively affect U.S. exports to the UAE.

In April 2020, GCC Member States notified the WTO of a draft Gulf Standardization Organization (GSO) technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have expressed concerns that the new technical regulation may place additional requirements on U.S. producers without offering additional assurance of compliance. The United States submitted comments to GCC Member States in July 2020 noting the unprecedented and potentially trade restrictive nature of the measure, and raised concerns in the WTO TBT Committee in October 2020.

Restrictions on Hazardous Substances – Electrical Goods

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

Energy Drinks

In 2016, GCC Member States notified the WTO of a draft GSO technical regulation for energy drinks. The U.S. Government and private sector stakeholders have raised questions and concerns regarding the draft regulation, including labeling requirements regarding recommended consumption and container size, in addition to potential differences in labeling requirements among GCC Member States. In 2019, GCC Member States notified the WTO of a revision of the draft regulation that failed to resolve many of the questions and concerns raised by the U.S. Government and private sector stakeholders.

Sanitary and Phytosanitary Barriers

Livestock

In March 2020, MOCCAE issued Resolution 98 on imported livestock. The resolution aims to define and register imported animals, including camels, cattle, sheep and goats, for the purposes of controlling animal diseases and protecting public health. According to the resolution, the Abu Dhabi Agriculture and Food Safety Authority shall create accounts for all importers of livestock under the identification system of producing animals. Article 4 of the resolution stipulates that an importer must provide identification marks for the imported animals according to MOCCAE's import permit system, and MOCCAE bans any changes or modification to the animal's identifications. The MOCCAE specified that live sheep, goats, cows, birds, day-old chicks and hatching eggs are authorized for import from the United States. Only camels are not authorized for import from the United States.

Food Additives

The UAE policy to reference only Codex and European Union (EU) food additive standards within their national legislation (UAE 192: 2019) 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 recognize food additive standards established in the United States as well as those of the EU.

Agricultural Biotechnology

In May 2020, the UAE issued Federal Law No. 9 regarding the biosafety of agricultural biotechnology products. The law prohibits the import, export, re-export, transit, production, and circulation of any agricultural products with biotechnology content of equal to or higher than 0.9 percent. For agricultural products with a biotechnology content less than this threshold, a permit is required.

Pesticide Maximum Residue Limits

In May 2020, the UAE issued Federal Law 10 on pesticides, defining the processes for registering, importing, re-exporting, tradin, and advertising the use of pesticides. The law authorizes MOCCAE to set the permissible maximum residue limits for pesticides in food and feed products. The law prohibits the production, import, re-export or advertisement of any type of pesticide that is not registered with MOCCAE. The maximum penalties for violation of this law are up to $272,257 in fines and one-year imprisonment.

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 of the date of receiving invoices.

In 2020, the Abu Dhabi Investment Office (ADIO) issued new Public-Private Partnership (PPP) procurement regulations to support greater collaboration between the private and public sectors in the emirate of Abu Dhabi. The regulations followed an announcement earlier in 2020 that the Abu Dhabi

Government would tender approximately $2.72 billion in infrastructure partnership projects across a range of sectors, including education, transport, and municipality. ADIO also published a "Partnership Projects Guidebook" highlighting PPP procedures for partnership projects in Abu Dhabi.

In May 2020, the Ministry of Finance (MoF) issued three decisions reducing fees payable to Federal entities across UAE, including: Council of Ministers Resolution No. 36 on registering in the Federal Supplier Register, Resolution No. 37 amending procurement regulations for federal tenders, and Resolution No. 38 amending fees for services provided by the Ministry of Infrastructure Development. These resolutions reduced fees to register in the MoF's Federal Supplier Register by 50 percent, from $272.25 to $136.13; cancelled renewal fees; and cancelled fees for submitting tender documents to federal entities.

The UAE generally provides a 10 percent set-aside for domestic small and medium-sized enterprises (SMEs) and a 10 percent price preference for GCC goods in federal government procurement. Companies must be at least 51 percent UAE-owned to participate in federal government procurement, except for major projects or defense contracts. The UAE also provides a 10 percent price preference to environmentally friendly or "green" companies and to "green" commodities and services produced in the UAE.

In 2020, the UAE Government boosted its procurement support for SMEs to address the COVID-19 pandemic's impact on SMEs. In April 2020, Abu Dhabi Government earmarked 15 percent of procurement spending and annual contracts to micro, small, and medium enterprises (MSMEs). The Dubai Government provides a set-aside for SMEs and requires that all Dubai Government entities and companies, in which the Dubai Government has at least 25 percent ownership, provide preferences for MSMEs that include a registration fee exemption, a 10 percent set-aside, a discounted rent of 5 percent for entities in commercial centers and a 5 percent price preference.

Foreign defense contractors continue to raise concerns about satisfying contractual obligations through a Tawazun Economic Program Agreement (TEPA) as administered by the Tawazun Economic Council (TEC). The TEPA is colloquially referred to as an "offset agreement" by defense contractors, and despite TEC's recent reforms of the program as reflected in the 2019 Tawazun Economic Program Policy Guidelines, satisfying offsets in the UAE remains a challenge for U.S. defense contractors. TEC requires defense contractors with contracts valued at more than $10 million to establish commercially viable joint venture projects with UAE companies yielding profits equivalent to 60 percent of the contract value within a seven-year period. Certain projects can be granted a grace period as a result of their complexity, sophistication, or infrastructure requirements. Financial 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 to cover potential failure to satisfy offset obligations. TEC has announced it will begin evaluating tenders based on the potential offset value associated with a contract. Once approved by TEC, offset projects can fall under the UAE defense conglomerate, EDGE.

Abu Dhabi National Oil Company's (ADNOC) In-Country Value (ICV) Program requires suppliers to provide an ICV certificate demonstrating their plans for local content and hiring as part of their bids. ADNOC considers the ICV score when awarding contracts. In 2020, the UAE expanded their ICV program by signing contracts with a number of UAE Government-affiliated or UAE Government-owned companies. On February 25, 2020 Abu Dhabi Department of Economic Development (ADDED) and ADNOC signed a Memorandum of Understanding to standardize ADNOC's ICV certification program across the Abu Dhabi Government's procurement process, establishing a unified ICV certificate for the Abu Dhabi Government's commercial evaluation process of goods and services procurement. A new federal center for ICV strategy was established in July 2020 under the newly created Ministry of Industry and Advanced Technology to expand ICV to federal projects outside of Abu Dhabi. In September 2020, ADNOC signed

two framework agreements to implement ICV with sovereign wealth fund Mubadala Investment Company and Emirates Nuclear Energy Corporation (ENEC). Under the terms of the new agreement, ADNOC, Mubadala, and ENEC will collaborate to create additional private sector employment opportunities for Emiratis, and to increase UAE-sourced goods and services. In October 2020, ADDED and Abu Dhabi Holding signed a cooperation agreement to implement ICV. U.S. firms have raised concerns that the ICV program is not transparent and that 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 Special 301 Report in light of intellectual property (IP) issues that represent barriers to U.S. exports and investment. Significant progress in 2020 was made on IP protection for pharmaceutical products. On September 21, 2020 the UAE Ministry of Health and Prevention (MoHAP) issued Ministerial Decree 321 to address IP protection for pharmaceutical products registered by MoHAP. The decree prevents an application for a generic drug to rely on the original drug's regulatory clinical or pre-clinical research data for eight years after the original drug obtains MoHAP's marketing approval. MoHAP confirmed Decree 321 covered all innovative pharmaceutical products, including biologics.

However, copyright piracy and trademark infringement remain a concern. Counterfeit enforcement remains erratic, varying both by geographic locale and among the different enforcement authorities at each port of entry. Some enforcement authorities, particularly in free trade zones, reportedly do not regularly investigate or take enforcement actions against sellers or shippers of counterfeit goods, nor do they uniformly seize counterfeit goods on their own initiative or destroy or otherwise prevent seized goods from being re-exported to their point of origin or transshipped to other destinations. Moreover, as of 2020, the UAE has yet to grant the necessary operating licenses to establish collective management organizations to facilitate copyright licensing and royalty payments.

The Notorious Markets List identified two markets in the UAE, Ajman China Mall and Diera District Markets, concerning the suspected distribution of a broad range of counterfeit goods to purchasers in the UAE and forwarding of counterfeit goods to other markets in the region, North Africa, and Europe. U.S. rights holders continued to raise concerns about the lack of IP prosecutions, varied and non-deterrent sentencing, the absence of enforcement actions without detailed complaints from right holders, limited enforcement capabilities in cross-emirate and cross-authority cases, and a lack of transparency and available information related to raids and seizures of pirated and counterfeit goods.

UAE authorities continued efforts to target pirated and counterfeit goods by launching inspection campaigns, making some seizures of counterfeit products, and organizing Intellectual Property Rights (IPR) awareness workshops and seminars. Dubai Customs destroyed around 148,700 counterfeit pieces in 2020 with a market value of about $870,000. Dubai Customs held online meetings with U.S. officials to forge cooperation in protecting IPR and preventing the trafficking of counterfeit products. Dubai Customs resolved 170 IPR disputes between January and September 2020, and the Dubai emirate took legal action on 23 counterfeiting cases.

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

Distribution 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 terminate the agreement, or unless there is judicial action to cancel the agreement.

In January 2019, the UAE amended 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. The amendments, which became effective in 2020, allow more local equity market. Following changes to the UAE Agency Law, UAE public joint stock companies with up to 49 percent foreign ownership can register as commercial agencies in the UAE.

Insurance Services

Foreign insurance companies are allowed to operate independently in the UAE only as branches. Council of Ministers Resolution No. 16 of 2017 allows for an increase from 25 percent to 49 percent foreign equity in domestic insurance companies.

In May 2019, the UAE's federal insurance regulatory body, the Insurance Authority (IA), issued a resolution on regulations for reinsurance businesses, requiring 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. However, a foreign reinsurance company may seek a license from the IA to operate as a branch.

In December 2019, the IA issued Circular 21 amending 2020 reporting requirements for insurance companies operating in the UAE. The circular asked insurance companies and insurance foreign branches to submit their annual reports to the IA. In September 2020, the UAE Cabinet amended provisions of the Council of Ministers Resolution No. 31 of 2019 concerning regular Economic Substance Requirements (ESR) for many financial and commercial firms. This amendment subjects foreign-owned financial firms, including banks, insurers, and purveyors of other financial products, to onerous reporting requirements, while companies that are majority-owned by UAE nationals are exempt from these requirements. Failing to meet an ESR test can result in administrative penalties from IA of up to $13,613, and up to $81,677 for a second infraction.

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, although 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" Internet-based communications services, such as Voice over Internet Protocol services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services. In March 2020, the UAE regulators announced the temporary availability of five applications to support distance learning and remote working amid the COVID-19 pandemic.

The National Media Council created an Electronic Media Activity Regulation Resolution establishing a legal structure for licensing any entity involved in "E-Media." The resolution applies to UAE residents and social media influencers operating in the UAE, including all influencers who use their accounts to promote and/or sell products. The law requires the account owner to obtain a license for activities that include "any paid or unpaid form of presentation and/or promotion of ideas, goods, or services by electronic means, or network applications." It also requires influencers to identify sponsored and/or paid content on their social media channels. The private sector has raised concerns that the law is selectively enforced and overly broad, and that it may inhibit social media influencers based outside of the UAE from participating in the UAE digital economy.

The UAE's cybercrime laws include significant penalties for any person who by creating or running a website, or by other electronic means, derides or damages the reputation or the stature of the UAE, including any of its institutions or senior officials, or who produces, transmits or publishes a wide array of other prohibited content.

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, such 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 continued to raise concerns regarding the resolution of investment disputes and the difficulty of enforcing arbitration awards. Among other issues, foreign investors are concerned that pursuing arbitration with a UAE company would 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. In July 2019, pursuant to Federal Law No. 19 of 2018 on Foreign Direct Investment, 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.

In 2020, UAE Council of Ministers issued Resolution No. 16 defining conditions and minimum capital requirements for these activities under a "Positive List." The list included minimum capital requirements for each economic activity, which varies from AED 2 million (approximately $544,514) to AED100 million (approximately $27.23 million). The resolution 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.

UAE Federal Law No. 4 of 2012, as clarified in 2016, defines "a dominant establishment" and prohibits such 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. The resolution exempts establishments majority-owned by federal or local governments. Generally, state-owned enterprises are favored in legal disputes with foreign companies brought before the judiciary.

Under an Emirate of Ajman decree, the Ajman Department of Economic Development may not issue a new license or renew or modify a valid license for a real estate brokerage office unless the applicant is a UAE citizen or GCC national.

In 2019, the Abu Dhabi Government issued Law 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. The law also allows public joint stock companies to own a freehold interest in land and property anywhere in Abu Dhabi, provided at least 51 percent of the company is owned by UAE nationals. Outside of these parameters, foreign ownership of land is limited to a long-term lease of up to 99 years, renewable upon the agreement of both parties.

UNITED KINGDOM

TRADE SUMMARY

The U.S. goods trade surplus with United Kingdom was $8.8 billion in 2020, a 50.3 percent increase ($2.9 billion) over 2019. U.S. goods exports to United Kingdom were $59.0 billion, down 14.6 percent ($10.1 billion) from the previous year. Corresponding U.S. imports from United Kingdom were $50.2 billion, down 20.6 percent. United Kingdom was the United States' 5th largest goods export market in 2020.

U.S. exports of services to United Kingdom were an estimated $78.3 billion in 2019 and U.S. imports were $62.3 billion. Sales of services in United Kingdom by majority U.S.-owned affiliates were $267.3 billion in 2018 (latest data available), while sales of services in the United States by majority United Kingdom-owned firms were $161.0 billion.

U.S. foreign direct investment in United Kingdom (stock) was $851.4 billion in 2019, a 6.9 percent increase from 2018. U.S. direct investment in United Kingdom is led by nonbank holding companies, finance and insurance, and manufacturing.

TRADE AGREEMENTS

Following a June 2016 referendum, the United Kingdom (UK) formally left the European Union (EU) on January 31, 2020. At that time, the UK and the EU agreed that, during a transition period from January 31 until December 31, 2020, EU laws and regulations, particularly those related to the EU single market and customs union, would continue to apply in the UK. To avoid any break in existing legal coverage and mechanisms, the UK also passed legislation (The European Union (Withdrawal) Act 2018) to incorporate EU laws and regulations into domestic UK law, replacing references to EU entities and legal references with the corresponding UK ones. As a result, beginning January 1, 2021, the UK and EU had virtually identical legal and regulatory structures, although the UK is generally free to make changes to its laws and regulations independent of the EU.

The UK and EU negotiated a new trade agreement, the UK–EU Trade and Cooperation Agreement (TCA), that as of January 1, 2021, continues tariff-free and quota-free access to each other's markets without binding each other's regulatory regimes. Under the TCA, if domestic regulatory systems diverge in ways that significantly affect trade, either side may seek to rebalance the agreement by modifying market access commitments.

While the UK was a member of the EU, U.S. exporters and investors faced barriers to entering, maintaining, or expanding their presence in certain sectors of the UK market as set forth in the EU Chapter of this National Trade Estimate Report. Many of these barriers continue to exist since January 1, 2021, as the UK initially remains aligned to a large extent with EU regulations.

On May 5, 2020, the United States and UK announced the formal launch of trade agreement negotiations. U.S. and UK negotiators held five sets of negotiating sessions in 2020 and made considerable progress towards a comprehensive, ambitious trade agreement. In addition, on December 31, 2020, the United States and the UK completed the transition of five U.S.–EU agreements to new U.S.–UK agreements. These five agreements covered aspects of bilateral trade in wine, distilled spirits, marine equipment, telecommunication equipment, electromagnetic capability, pharmaceutical products (good manufacturing practices), and covered insurance and reinsurance. Additional information regarding the agreements can be found on the Office of the U.S. Trade Representative's website. The United States and the UK have

also ensured the transition of mechanisms supporting trade in organic products and recognition of veterinary health certificates.

IMPORT POLICIES

Tariffs

United Kingdom Global Tariff

In May 2020, the UK announced its Most-Favored-Nation (MFN) tariff regime (UK Global Tariff) that replaced the EU Common Customs Tariff as of January 1, 2021. According to the UK Government, the average MFN tariff rate under the UK Global Tariff regime will be 5.7 percent, compared to 7.2 percent under the EU Common Customs Tariff. The UK Global Tariff nearly doubles the number of products that are tariff-free compared to the EU Common Customs Tariff. The UK Global Tariff eliminates tariffs on approximately 500 goods that previously had EU tariffs of less than 2 percent, including cement, refrigerator freezers, and food processing machinery. It eliminates close to an additional 1,500 tariffs on key inputs to support UK manufacturing, including wood, machinery inputs, and plastics; goods where the UK has zero or limited production, including cotton yarn, bicycle parts, and footwear parts; and, goods to support UK green growth industries, including turbine parts, waste containers, and trees. The UK will eliminate use of the Meursing table used by the EU to calculate additional tariffs on certain foodstuffs based on the content of milk fat, sugar, and starch ingredients.

The UK retained duties on approximately 5,000 tariff lines, including on certain agricultural products, ceramics, chemicals, bioethanol, bananas, raw cane sugar, apparel, and vehicles. It retained 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.

Since 2018, U.S. imports of eye make-up, manicure and pedicure products, and make-up and skin care powders have been subject to additional import duties of 25 percent, imposed following U.S. action against steel and aluminum under Section 232 of the Trade Expansion Act. This has led to high duties and taxes on U.S. shipments into the UK.

Tariff-Rate Quotas

Under the UK Global Tariff, some products will be covered by a tariff-rate quota (TRQ). While the UK has provided indicative volumes for these quotas, it has also indicated that further advice will be published later. With the UK leaving the EU, the EU and the UK have argued that the TRQs in the existing EU schedule should be divided among the EU and UK in their new tariff schedules based on historic trade flows. Under Article XXVIII of the WTO's General Agreement on Tariffs and Trade, WTO Members, including the United States have engaged in negotiations on the TRQ quantities for both the UK and the EU. Under these negotiations, in January 2021, the United States reached agreement with the UK on TRQ access for a number of products of commercial interest to the U.S. exporters. The UK is expected to implement the new TRQs in the first half of 2021.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

The UK previously participated in the WTO Trade Facilitation Agreement (TFA) as a Member State of the EU. The UK confirmed its continued acceptance of the TFA following the end of the transition period on December 31, 2020.

Several UK Government information technology systems remain under development, and infrastructure is still being built at the Port of Dover and other border locations. There will be a need to hire and train thousands of new UK customs agents to assist companies in the UK to comply with new import/export requirements. As of March 2021, the UK Government had funded just over 20,000 training courses for new customs agents via two grant schemes. All these changes could lengthen the amount of time for U.S. goods required to enter or depart the UK.

New Border Controls

As of January 1, 2021, the UK is operating an external border with the EU, which means that controls will be placed on the movement of goods between Great Britain (*i.e.*, England, Wales, and Scotland) and the EU. The UK will introduce these new border controls in three phases through July 1, 2021. From January 1, 2021, traders importing standard goods will need to prepare for basic customs requirements, such as keeping sufficient records of imported goods. Traders will also need to consider how they account for and pay value-added tax (VAT) on imported goods. Traders will then have up to six months to complete customs declarations. While tariffs will be payable where due on relevant goods, payments can be deferred until the customs declaration has been made. UK safety and security declarations will not be required on imports for the first six months. Standard customs declarations will be needed from January 1, 2021, for controlled goods and excise goods like alcohol and tobacco products. There will also be physical checks at the point of destination or other approved premises on all high-risk live animals and plants and a requirement to pre-notify for certain movements.

From April 1, 2021, all products of animal origin and all regulated plants and plant products will also require pre-notification and the relevant health documentation. Any physical checks will continue to be conducted at the point of destination until July 2021.

From July 1, 2021, traders moving any goods will have to make full customs declarations at the point of importation and pay relevant tariffs. Full safety and security declarations will be required, and commodities subject to sanitary and phytosanitary (SPS) controls will have to be presented at specific border control posts. SPS checks for animals, plants and their products will take place at Great Britain Border Control Posts and not at destination. There will be no SPS border checks on products shipped from Northern Ireland into Great Britain.

Northern Ireland will be subject to separate arrangements under the Protocol on Ireland/Northern Ireland that accompanied the agreement between the UK and the EU addressing the UK's withdrawal from the EU. Checks on goods moving from Great Britain into Northern Ireland began on January 1, 2021 (although certain food products received grace periods before checks come into force). Agricultural goods shipped from Great Britain into Northern Ireland will be checked for compliance with EU SPS measures, including any required EU certifications.

Since these measures are new, there is uncertainty regarding how they will operate and any potential extensions of phase-in periods, which could significantly affect goods that flow to the UK through the EU or vice-versa.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals

As a member of the EU and during the transition period, the UK required companies to comply with the EU's Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) regime. As of January 1, 2021, the UK introduced a system analogous to the EU's REACH regime, which is known as UK REACH.

UK REACH will be aligned to the EU version initially and will maintain EU REACH's aims and principles. However, going forward there could be differences between the two regimes, as future changes to EU REACH will not automatically be reflected in the UK REACH regime and vice versa.

Cosmetics

EU cosmetics regulations were transposed into UK law via the UK Cosmetics Regulation and came into force on January 1, 2021. EU and UK law to regulate cosmetics thus are currently aligned and will likely remain so for the immediate future. As of January 1, 2021, compliance with the UK law and procedures is necessary in order to sell in Great Britain (*i.e.*, England, Wales, and Scotland), whereas compliance with the EU law and procedures will continue to apply to sell in Northern Ireland consistent with the Protocol on Ireland/Northern Ireland.

Sanitary and Phytosanitary Barriers

Although the UK is no longer a member of the EU single market and customs union, UK SPS measures are currently aligned with EU SPS measures because the UK incorporated those measures into UK domestic law as of December 30, 2020. The UK is able to establish domestic regulatory policies and SPS standards independently from the European Commission. However, under the Protocol on Ireland/Northern Ireland, the UK has committed for a period of time to apply EU customs and regulatory requirements on goods, including agricultural goods, in Northern Ireland, even if UK requirements diverge from those of the EU. As noted in the SPS section of EU Chapter in this NTE Report, the United States remains concerned about several SPS measures the EU maintains without scientific justification that negatively impact market access for U.S. agricultural products.

In the past as an EU Member State, the UK promoted science-based decision-making during the EU rulemaking process, and often served as a strong ally for the United States in encouraging other EU Member States to support science and risk-based decision-making. With its departure from the EU, the UK may choose to review certain EU SPS measures incorporated into its legislation; however, the UK has given no indication regarding what types of regulatory decisions it will make in the future or when they will be ready to undertake such a review.

Agricultural Biotechnology

Following the UK–EU transition period, the UK has the freedom to establish its own regulatory and policy approach for agricultural biotechnology products, including crops and animals. The UK has not finalized how or whether its policies for the domestic production and importation of these products will depart from the EU's approach.

Geographical Indications

From January 1, 2021, the UK will set up its own geographical indications (GI) scheme, which will limit the use of the geographical names for food, drink, and agricultural products (including beer, cider, and perry); spirit drinks; wine; and aromatized wine.

The new UK schemes will use these designations:

- Protected Designation of Origin (PDO)
- Protected Geographical Indication (PGI)
- Traditional Speciality Guaranteed (TSG)

The UK schemes will be open to producers from the UK and other countries. All existing products registered under the EU GI schemes as of December 31, 2020, will remain covered under the new UK GI schemes, including both UK and EU GIs.

From January 1, 2021, producers seeking the exclusive use of geographical names will need to apply to the UK scheme to protect a new product name in Great Britain or to the EU scheme to protect a new product name in Northern Ireland and the EU. Great Britain producers will need to secure protection under the UK scheme before applying to the EU scheme. Northern Ireland producers do not need to secure protection under the EU scheme before applying to the UK scheme. The UK Government will publish further guidance about this issue after January 1, 2021.

SUBSIDIES

Government Support for Airbus

Over many years, the UK, together with other EU Member States, has provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft.

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 Dispute Settlement Body (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.

For further discussion on U.S. countermeasures, see Chapter II.B Section 301 of the 2020 Annual Report.

Agricultural Subsidies

The UK's departure from the EU also means the UK's departure from the EU Common Agricultural Policy (CAP). The UK Government passed its own Agriculture Bill in November 2020, which provides the legislative framework for agricultural support schemes and a range of powers to implement new approaches to farm payments and land management. In contrast to the production support focus of the EU CAP, UK farmers will be paid to produce "public goods" such as environmental or animal health and welfare improvements.

In the UK, agriculture is a devolved competence, which means that the provisions on new farm support schemes laid out in the Agriculture Bill mainly apply to England. While the UK's agricultural budget is provided centrally, the administrations in Scotland, Wales, and Northern Ireland have the power to modify it. Public consultations took place in all four nations and led to different preferences being expressed, and some variation in application is therefore to be expected. Powers are included in the Agriculture Bill for Northern Ireland to enable preparation of replacement schemes. Wales and Scotland will introduce their own legislations that will generally mirror the legislation for England, but there are likely to be some cross-border differences. Aside from farm support, some measures, such as those on food security and fair dealing in the supply chain, do apply to the four nations. Measures on meeting WTO obligations also apply across the UK.

GOVERNMENT PROCUREMENT

The UK previously participated in the GPA as a member of the EU. Following an agreement by the Parties to the GPA, the UK remained covered by the GPA as an EU Member State after its withdrawal from the EU through the end of the transition period on December 31, 2020, and acceded as a Party in its own right to the GPA on January 1, 2021.

UK Space Agency

Participation in European Space Agency (ESA) procurements, to which the UK contributes funding, is generally only open to economic operators in ESA Member States. U.S. companies are generally prohibited from competing on ESA contracts. A significant amount of money is allocated by the UK to ESA. For

example, the UK Space Agency allocated £252.4 million (approximately $350.6 million) to ESA in its 2018–2019 budget, which is approximately 67 percent of the UK Space Agency's total budget.

INTELLECTUAL PROPERTY PROTECTION

The UK generally maintains high levels of intellectual property (IP) protection and enforcement. However, U.S. stakeholders have expressed concern that the UK music copyright collective fails to remunerate U.S. artists for radio broadcasts and public performances of their music in the UK. The United States will continue to monitor developments with the UK's IP system, including the impact that its new scheme for the protection of geographical indications may have on prior trademark rights and on market access for U.S. goods that rely on the use of common names.

SERVICES BARRIERS

Funding Portability

In the UK, government-issued student loans cannot be used for international degree programs, including programs in the United States. UK students can use such loans for temporary study abroad, but only as part of a UK-accredited degree course, which in effect discourages them from seeking U.S. degrees.

Professional Qualifications

There is generally no reciprocity with the UK for medical certifications, qualifications, and degrees. There is also a cap on foreign medical students allowed in the UK (7.5 percent), which effectively limits the number of U.S. students studying medicine in the UK. Permission to act as a chartered accountant also requires the applicant to have professional experience in the UK, thus preventing experienced U.S. certified public accountants from obtaining authorization to practice in the UK. Efforts are being made to address this through bilateral arrangements.

BARRIERS TO DIGITAL TRADE

Data Localization

The UK Data Protection Act of 2018 restricts the transfer of the personal data of UK data subjects (any natural person whose personal data is being processed) outside of the UK, except to specific countries that the UK has determined provide adequate data protection under UK law or when other specific requirements are met, such as the use of standard contract clauses or binding corporate rules.

The United States remains concerned that the implementation and administration of the UK Data Protection Act 2018, which is modeled after the EU General Data Protection Regulation, create disproportionate barriers to trade, not only for the United States, but for all countries outside of the UK. The United States will continue to engage with the United Kingdom to promote interoperability between UK and U.S. approaches to data protection to ensure the cross-border flow of data between the United Kingdom and the United States.

Interactive Computer Services

Online Harms

On December 15, 2020, the UK Government released more details on its plan to introduce an "Online Safety" bill in 2021. This legislation, a result of the UK "Online Harms" consultation that it launched in

April 2019, will impose a new "duty of care" on a wide range of online service providers to prevent the distribution of harmful online content. The UK states that its new regulatory framework will include social media services, consumer cloud storage sites, video sharing platforms, online forums, dating services, online instant messaging services, peer-to-peer services, video games enabling online user interaction, and online marketplaces. The UK also intends to place additional obligations on larger companies that it determines provide "high risk" services. The framework grants broad authority to Ofcom, the UK communications regulator, to develop codes of practice concerning a company's "duty of care" and to enforce obligations, including imposing fines of up £18 million or 10 percent of global annual turnover, whichever is higher. Several U.S. stakeholders have expressed concern about the proposal's scope, ambiguity, and the regulator's role and powers.

Digital Services Taxation

In July 2020, the UK Government adopted a digital services tax, which began to accrue retroactively on April 1, 2020. The digital services tax imposes a two percent tax on the revenues of search engines, social media services, and online marketplaces, as well as associated online advertising services. It will apply to businesses that provide a covered service when the business's worldwide revenues from these digital activities are more than £500 million (approximately $694.4 million) and more than £25 million (approximately $34.7 million) of these revenues are derived from the UK.

In June 2020, the United States initiated a Section 301 investigation into the UK's digital services tax over concerns that the tax, which largely applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory and burdens or restricts U.S. commerce. On January 14, 2021, USTR issued a report of its Section 301 investigation that identified unreasonable, discriminatory, and burdensome attributes of the UK's digital services tax, including a structure that targets leading U.S. companies, results in double taxation, and burdens or restricts U.S. commerce.

URUGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Uruguay was $695 million in 2020, a 36.6 percent decrease ($402 million) over 2019. U.S. goods exports to Uruguay were $1.3 billion, down 22.7 percent ($367 million) from the previous year. Corresponding U.S. imports from Uruguay were $555 million, up 6.8 percent. Uruguay was the United States' 70th largest goods export market in 2020.

U.S. foreign direct investment in Uruguay (stock) was $999 million in 2019, a 7.5 percent decrease from 2018.

TRADE AGREEMENTS

The United States and Uruguay signed a Trade and Investment Framework Agreement (TIFA) on January 25, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Uruguay.

IMPORT POLICIES

Tariffs and Taxes

Uruguay's average Most-Favored-Nation (MFN) applied tariff rate was 10.3 percent in 2019 (latest data available). Uruguay's average MFN applied tariff rate was 9.9 percent for agricultural products and 10.4 for non-agricultural products in 2019. Uruguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.6 percent.

Uruguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991 that also comprises Argentina, Brazil, and Paraguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35 percent *ad valorem* and averages 12.5 percent.

MERCOSUR provisions allow its members to maintain a limited number of national and sectoral list exceptions to the CET for an established period. Uruguay's national exceptions, mostly inputs for domestic industries that produce for the local market, include 256 tariff lines that expire in December 2022. MERCOSUR's sectoral lists allow special regimes for imports of capital goods and imports of computer and telecommunications goods from non-MERCOSUR countries. Uruguay's list of capital goods included 1,297 tariff subheadings scheduled to expire in December 2021. Uruguay's list of computer and telecommunications goods includes 260 tariff lines that are scheduled to expire in December 2022. Modifications to MERCOSUR tariff rates are made through resolutions and are published on the MERCOSUR website.

According to MERCOSUR procedures, any good imported into any member country is subject to the payment of the CET to that country's customs authorities. If the product is then re-exported to any other MERCOSUR country, the CET must be paid again to the second country.

In 2010, MERCOSUR took a step toward the establishment of a customs union by approving a Common Customs Code (CCC) and launching a 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 March 2021, only Argentina had done so.

Non-Tariff Barriers

Import Licensing

Uruguay applies automatic or non-automatic import licenses to 378 products. Automatic licenses are used for statistical purposes (*e.g.*, textiles, footwear, and oils), granting preferences (*e.g.*, vehicles and paper for publishing), or monitoring prices. Non-automatic licenses are used to grant tariff exemptions to domestic users (*e.g.*, sugar).

Customs Barriers and Trade Facilitation

Uruguay ratified the WTO Trade Facilitation Agreement in 2016.

In addition to tariffs, Uruguay charges additional fees and taxes on imports. The consular fee on imports remains a concern for traders. It is 5 percent *ad valorem*, up from 2 percent in 2018. In addition, traders pay charges to customs clearing agents and port authorities, and an *ad valorem* tax on imports of newsprint.

The U.S. express delivery service suppliers have raised concerns about restrictions on packages imported to Uruguay, including low-value packages under $200.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Since 2017, the United States has raised concerns at the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) on modifications to front-of-pack labeling regulations that require the use of "high in" statement and black and white octagon-shaped symbols for prepackaged foods and beverages that exceed certain thresholds of fat, saturated fat, sodium, and sugar. On September 2, 2020, the Government of Uruguay amended its regulation by modifying the nutrient threshold levels that trigger the use of the front-of-pack labeling, and postponed the enforcement of the labeling requirement until February 1, 2021 (Decree 246/20). In January 2021, before the measure came into effect, Uruguay made additional changes that increase the nutrient threshold levels, seeking to harmonize domestic and MERCOSUR regulations. The United States had raised this issue bilaterally with Uruguay at the 2020 October WTO TBT Committee.

Sanitary and Phytosanitary Barriers

In December 2017, Uruguay broke a six-year *de facto* moratorium on approvals of products of biotechnology, and approved all products of biotechnology that were under review. In December 2020, Uruguay approved an additional seven products. However, U.S. firms continue to have concerns with the current pace and transparency of the approval process.

GOVERNMENT PROCUREMENT

Uruguay uses government procurement as a tool for promoting local industry, especially micro, small, and medium enterprises (MSMEs), and enterprises that innovate in technological and scientific areas. Most government contracts (except for those in areas in which the public and private sectors compete) prioritize goods, services, and civil engineering works produced or supplied by domestic MSMEs. The most commonly used preferential regime grants an 8 percent price preference to goods and services produced domestically, regardless of the firm's size. MSME programs grant price preferences ranging from 12 percent to 16 percent for MSMEs competing against foreign firms.

Uruguay 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 encourages Uruguay to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of Geographical Indications, including in connection with trade agreement negotiations.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $69.7 billion in 2020, a 24.9 percent increase ($13.9 billion) over 2019. U.S. goods exports to Vietnam were $10.0 billion, down 8.0 percent ($871 million) from the previous year. Corresponding U.S. imports from Vietnam were $79.6 billion, up 19.5 percent. Vietnam was the United States' 28th largest goods export market in 2020.

U.S. exports of services to Vietnam were an estimated $2.5 billion in 2019 and U.S. imports were $1.3 billion. Sales of services in Vietnam by majority U.S.-owned affiliates were $860 million in 2018 (latest data available). There were no sales of services in the United States by majority Vietnam-owned firms in 2018.

U.S. foreign direct investment in Vietnam (stock) was $2.6 billion in 2019, a 8.2 percent decrease from 2018.

TRADE AGREEMENTS

The United States–Vietnam Trade and Investment Framework Agreement

The United States and Vietnam signed a Trade and Investment Framework Agreement (TIFA) on June 21, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Vietnam.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Vietnam's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2019 (latest data available). Vietnam's average MFN applied tariff rate was 17.2 percent for agricultural products and 8.4 percent for non-agricultural products in 2019 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an 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. On July 10, 2020, Decree 57/2020/ND-CP, revising and supplementing Decree 125, came into effect and applied a zero percent tariff rate through 2024 for materials, inputs, and spare parts, (HS subheading 98.49) to be used for car production and assembly, that domestic companies are not able to manufacture.

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.

Non-Tariff 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, refurbished medical devices, and certain cultural products.

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

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.

Customs Barriers and Trade Facilitation

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

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.

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.

Circular 32/2018/TT-BYT (Circular 32), in force since September 1, 2019, regulates the drug registration process in Vietnam. It requires the Drug Administration of Vietnam (DAV) to coordinate with diplomatic missions and foreign regulating agencies to verify the authenticity of legal documentation of pharmaceutical products, including the Certificate of Pharmaceutical Product (CPP), in drug registration dossiers necessary for the issuance and/or renewal of the marketing authorization for a drug. However, Circular 32 requires CPPs to contain some content that foreign regulators are unable to verify. This has resulted in a backlog of certain drug registration renewals and applications, ultimately lead them to expire.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Automobiles and Automotive Parts

On February 5, 2020, Vietnam enacted Decree 17/2020/ND-CP revising Decree 116/2017/ND-CP. Decree 116/2017/ND-CP tightened conditions for automotive manufacture, assembly, importation, service, and

automobile warranties. Decree 17/2020/ND-CP removed requirements for new cars imported from countries with self-certification systems from emission and safety pre-checks. Imported cars of any self-certified model can freely enter Vietnam with sample testing every three years. The vehicles are also subject to random emissions and safety tests, which is standard for the industry in the United States. The United States will continue to monitor Vietnam's implementation of the revised measure.

Glyphosate

On April 24, 2020, the Ministry of Agriculture and Rural Development (MARD) issued Circular 06/2020 to extend the use of crop protection products containing glyphosate in Vietnam to June 30, 2021. The United States continues to request that Vietnam postpone the ban until it conducts a thorough scientific review of the chemical.

Sanitary and Phytosanitary Barriers

Importation Approvals for Genetically Engineered Products

While Vietnam is a major importer of key genetically engineered (GE) plant products, Vietnam's regulatory review and approval process for biotechnology applications has been significantly delayed since July 2016. Through concerted U.S. Government engagement, Vietnam has gradually approved outstanding applications that were originally submitted as early as 2015. As of December 2020, four GE product applications remain outstanding. Industry reports that all outstanding products meet Vietnam's requirement for "five country recognitions" for biotechnology food and feed authorizations, which allows for expedited review of the products. In October 2020, MARD's GE Food and Feed Safety Committee convened to review the four outstanding applications, but requested additional data from industry on animal-feeding studies.

Commercialization of Genetically Engineered Crops and Varieties

In 2017, Vietnam suspended field testing of GE crops for biosafety assessments, effectively blocking commercialization. There are eight GE corn varieties pending MARD's review for cultivation approval. Following intensified U.S. Government engagement, Vietnam issued Decree 94/2019 in December 2019, allowing for the importation of GE varieties for field testing after the GE events obtain both a Certificate of GE Food/Feed Approval and a Certificate of Biosafety. In October 2020, Vietnam issued Decree 118/2020 to renew regulations on field testing of all GE crops, including corn, for biosafety assessments. The new Decree took effect on October 2, 2020.

Feed Safety Import Inspection

Vietnam's Animal Husbandry Law (AHL) took effect on January 1, 2020, leading Vietnam to revise regulations on import inspection of animal feed and feed ingredients. On January 21, 2020, Vietnam issued Decree 13/2020, requiring registration for quality examination prior to arrival. In March 2020, Vietnam issued National Technical Regulation (NTR)190:2020 stipulating the Maximum Limits (MLs) of Undesirable Substances on Feed and Feed Ingredients. Together, these two measures could negatively affect a large portion of U.S. agricultural exports to Vietnam – particularly exports of grain and oilseed products, such as soybean meal, distillers dried grains with solubles (DDGS), and corn gluten feed.

Certificate of Free Sale for Feed and Feed Ingredients

Decree 13/2020 also requires that imported animal feeds and feed ingredients, including corn, rice, wheat, and soybeans, be accompanied by a Certificate of Free Sale (CFS) issued by competent authorities of the

exporting country confirming that a quality examination has been conducted prior to the arrival of each shipment. The United States does not have a federal system for issuing standardized CFS documents and would be unable to meet this requirement. On December 3, 2020, Vietnam put forth a draft revision that would exempt certain products from the CFS requirement if the products are accompanied by a phytosanitary certificate stating that the product is used as animal feed in the country of origin. The U.S. Department of Agriculture (USDA) is working with Vietnam to ensure that U.S. products of interest are on the list of products eligible for exemption from the CFS requirement.

National Technical Regulation 190 on Maximum Residue Limits of Undesirable Substances in Feed and Feed Ingredients

NTR 190 set a zero tolerance for *Salmonella* and renewed Maximum Residue Limits (MRLs) for heavy metals in feed ingredients of plant origin for both livestock and aquaculture feed. This NTR was scheduled to be enforced on imports beginning on July 1, 2020, but was postponed until July 1, 2021, to allow for further review and assessment.

Good Laboratory Practice Requirements for Pesticide Registration

Registration of pesticides in Vietnam is regulated under the Plant Protection and Quarantine Law and MARD's Circular 21/2015 guiding the management of pesticides. As a mandatory step within the registration process, pesticide companies are required to submit technical documents to the Plant Protection Department (PPD) to obtain an Experimental Use Permit (EUP), and these documents must be issued by laboratories satisfying Good Laboratory Practices (GLP) standards. Industry reports that since February 2020, PPD has refused to issue EUPs for applications with toxicological test reports without GLP certificates, including those conducted in U.S. labs. As a member of the Organization of Economic Cooperation and Development (OECD), all labs in the United States have been inspected and deemed competent authorities.

USDA provided PPD with background information on U.S. GLP regulations and written confirmation of GLP compliance of U.S. labs.

Plant Quarantine Restrictions

Vietnam requires pre-shipment fumigation for shipments of corn, DDGS, and wheat due to the presence of quarantine and non-quarantine pests. 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

Decree 13/2020, issued in January 2020, established a timeline to end the preventive use of certain antibiotics in animal feed for livestock and poultry by the end of 2025. The Department of Animal Health at MARD has drafted a Circular on Veterinary Drug Prescription that lists the antibiotics allowed for preventive use in Vietnam, but has not notified this draft Circular to the WTO. The United States will continue to engage with Vietnam on this issue and monitor related developments.

Food Safety

On February 2, 2018, Vietnam adopted Decree 15 on the enforcement of the Food Safety Law, which provides new guidance on registrations, announcements, certificates, labels, advertisements, working conditions, origins of food and food additives, and jurisdiction for food safety issues. Although Decree 15 simplifies many import procedures for food and agricultural products, some aspects create uncertainty, with different Vietnamese Government ministries, and even departments within MARD, appearing to contradict each other regarding its interpretation. For example, MARD and the Vietnam Food Administration (VFA/MOH) provided contradictory interpretations regarding the definition of "processed products," which are exempt from the facility registration process under Decree 15. 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.

In October 2020, the Vietnam General Department of Customs (GDC) submitted a reform proposal to the Government of Vietnam which would create a risk-based model for both food safety and quality import inspection with the GDC as the leading authority. GDC proposed that the Government of Vietnam draft a new Decree in 2021 to revise Decree 15/2018 on Food Safety as well as Decrees guiding the Law on Quality of Goods and Products.

Ban on Offal Products

Despite MARD lifting Vietnam's ban on the importation of so-called "white offal" such as poultry gizzards, beef and pork stomach and intestines 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 Canadian thistle (*Cirsium 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 *Cirsium arvense*. This policy has created uncertainty for exporters, importers, and the Vietnamese feed and flour milling industries.

On March 18, 2020, Vietnam notified to the WTO a Draft Circular publishing National Technical Regulations on Phytosanitary Requirements for Imported Regulated Articles. The circular includes a zero tolerance for *Cirsium arvense*, among other plant quarantine pests. The United States provided comments on the notification, but has not received a response.

Timber

On September 1, 2020, Vietnam issued Decree 102/2020/ND-CP, regulating the Timber Legality Assurance System. The Decree, which entered into force on October 30, 2020, stipulates regulations for importing and exporting timber following a risk-based approach. Section 1 under Chapter 2 of the Decree provides provisions regulating management of imported timber into Vietnam. Timber exporting countries are categorized into positive or nonpositive geographic regions. Criteria are also outlined to identify the types of timber that are considered risky to import into Vietnam. The list of countries in the positive geographical area will be updated and published periodically following international treaties that Vietnam is party to. The list of types of timber will be updated and published every six months. Although Vietnam categorized the United States as a positive geographic region in November 2020, t, it is not yet clear what the effect the Decree will have on U.S. timber exports.

GOVERNMENT PROCUREMENT

Vietnam's 2013 Law on Procurement provides the basic framework for Vietnamese government procurement and generally promotes the purchase of domestic goods or services in government procurement when they are available. U.S. exporters do not enjoy any guaranteed access to Vietnamese government procurement.

Vietnam is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since 2012.

INTELLECTUAL PROPERTY PROTECTION

Vietnam remained on the Watch List in the Special 301 Report. Despite positive developments in 2020, such as the issuance of the national intellectual property (IP) strategy, continued public awareness campaigns and training activities, and reported improvements on border enforcement in some parts of the country, the United States remains concerned about IP protection and enforcement in Vietnam, including in the digital environment. Capacity and resource constraints, corruption, and poor coordination among enforcement agencies continue to pose challenges to effective IP enforcement. Piracy and sales of counterfeit goods online 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, continue to be included in the Notorious Markets List. 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. The United States also continues to monitor the implementation of IP provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the European Union–Vietnam Free Trade Agreement.

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.

Since 2019, the Authority of Broadcasting and Electronic Information (ABEI) under the Ministry of Information and Communications (MIC) has been drafting 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.

Through several rounds of consultations under the TIFA and other advocacy channels with Vietnam, the United States has requested MIC to address concerns raised by stakeholders. In September 2020, ABEI verbally informed major stakeholders, including the U.S.–ASEAN Business Council and U.S. Embassy Hanoi, that they were working on a new draft that would moderate earlier proposed provisions on local content quotas and translation. However, ABEI indicated licensing requirements would remain in order to compel foreign companies providing broadcasting services in Vietnam to pay taxes and comply with content controls. The timeline for these potential revisions to Decree 06/2016 remains unclear.

On December 31, 2020, the Ministry of Culture, Sports and Tourism published for comment a draft Revised Cinema Law that would extend certain film-licensing requirements for theatrical screenings, including a 15-day review process, to all films offered online, as well as require all suppliers of online film screening services to have a local presence. Stakeholders have raised several concerns, including the ability of regulators to efficiently process the very large number of films in, and regularly added to, online catalogs.

Retail 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 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 in terms of traffic, hygiene, competition to nearby traditional markets, and contributions to socio-economic development. Retail outlets of less than 500 square meters located in shopping malls are exempt from the economic needs test requirement.

Financial Services

Foreign investors may establish 100 percent foreign-owned bank subsidiaries, or may take ownership interests in domestic "joint stock" banks (*i.e.*, commercial banks with any percentage of private ownership) or "joint venture" banks (*i.e.*, 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 banking partner) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Over the last two years, 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

In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Vietnam then issued Circular 19/2016/TT-NHNN (Circular 19) mandating that all domestic and

cross-border retail credit and debit transactions be processed through NAPAS initially starting in January 2018, although Vietnam subsequently extended the implementation deadline. Circular 19's requirements would have prohibited foreign electronic payment services suppliers from supplying services fully on a cross-border basis (*i.e.*, without involving NAPAS, a competing service supplier). On December 25, 2019, Vietnam issued Circular 28, which amended Circular 19 to apply only to domestic retail electronic payment transactions when a payment card is presented at the merchant point of sale (excluding domestic online transactions) including for internationally-branded payment cards and extended the deadline for implementation to January 1, 2021.

Telecommunications Services

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. For instance, for domestic companies that provide basic telecommunication services with infrastructure, foreign ownership is generally capped at 49 percent; for companies that supply telecommunications services without infrastructure, foreign ownership is capped at 65 percent. Vietnam allows foreign ownership of up to 70 percent for virtual private network (VPN) suppliers and for ASEAN-nationality companies providing value-added telecommunication services without infrastructure. Facilities-based operators are required to be State-controlled firms, meaning that the State, through the relevant line ministry, must hold 51 percent or more of equity.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

Vietnam's National Assembly passed the Law on Cybersecurity (LOCS) in June 2018. Article 26 requires online firms to store personal and other types of data and to establish branch or representative offices in Vietnam. The LOCS 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 LOCS'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. A recent version of the draft decree would also require all domestic companies to store data onshore, which could prevent U.S. cloud services providers from providing services on a cross-border basis to Vietnamese firms. The United States is concerned that implementation of the LOCS could disrupt international trade in services, and has submitted several rounds of comments to the Ministry of Public Security (MPS), which is drafting the decree. The United States will continue to engage the Government of Vietnam to ensure that implementing measures for the LOCS do not disrupt international trade in services.

Internet Services

Online Advertising Services

Decree No. 181/2013/ND-CP (Decree 181) 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. The United States has urged Vietnam to remove these local agent requirements.

In 2019, the Government of Vietnam charged MIC's ABEI with responsibility to revise Decree 181 to regulate the cross-border supply of online advertising services. A draft revision of Decree 181 was posted for public comment in August 2020. The proposed revision would eliminate requirements for cross-border advertising services providers to offer their services through a local advertising agency and to inform Vietnamese authorities in writing 15 days before running an ad in Vietnam. However, the revised draft of Decree 181 would impose new and potentially burdensome review and reporting requirements on cross-border advertisers, including requiring that advertising service providers cooperate with MIC on content control regulations and that they pre-filter content proscribed by the Law on Cybersecurity.

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 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 (Decree 72) 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 (Decree 27) to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

In April 2020, ABEI proposed draft amendments to Decree 72 that would impose an array of burdensome, impractical, or technically infeasible requirements on a wide range of suppliers of Internet services and content providers. These include unreasonably short takedown requirements and insufficient due process for companies providing "public information across the border" to contest any allegation of illegality; impractical licensing, data localization, and local establishment requirements for social media services; infeasible *ex ante* content filtering requirements; unnecessary registration or licensing requirements potentially covering a wide array of services, including mobile content services and video games; and, payment localization requirements for video games.

MIC Circular 38/2016/TT-BTTT (Circular 38) on Cross-border provision of General Information, which implements Decree 72, requires offshore service providers with a large number of users in Vietnam to comply with online content restrictions. Specific requirements under Circular 38 apply to offshore entities that provide public information 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 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.

Personal Data Protection Regulation

On February 9, 2021, MPS issued a draft Personal Data Protection decree. The draft would impose registration requirements for processing sensitive personal data, and requires companies to store original personal data in Vietnam, receive approval to transfer personal data cross-border, and maintain a 3-year history of data transfer. The draft also proposes creating a Personal Data Protection Commission ~~a~~ within MPS responsible for approving a company's data protection measures and for annually reviewing a company's data privacy practices. In the event of data leakage, a company's ability to transfer data cross-border could be terminated. Under the draft rules, violations could be result in fines of up to 5 percent of a company's revenues.

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 (ranging from 5 percent to 40 percent) 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. These goods include: plants and botanical parts, ores, coal, crude oil, chemicals, skins, wood, charcoal, gems, silver and gold, jewelry, and metals and metal products. Decree 57/2020/ND-CP revising and supplementing Decree 125 increased export tax rates for copper tubes and pipes (HS subheading 74.11) from zero percent to five percent. Vietnam also maintains export tariff-rate quota regimes for salt, tobacco, eggs, and sugar.

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 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,[1] the Office of the U.S. Trade Representative (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 report[2], 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, that 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, identifies those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property protection. The 2021 Special 301 Report will be released later this year.

Global trade in environmental goods, including GHGIRTs, is estimated to be over $966.9 billion annually, and the United States exported $247.1 billion of environmental goods in 2020[3]. China has remained the top GHG emitting developing country since the first GHGIRTs report in 2006.

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[1] 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."

[2] 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.

[3] Based on 2020 UNComtrade data and includes U.S. exports and re-exports. Re-exports defined as exports of foreign goods in the same state as previously imported.

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	Exports*	Exports*	Change 2018-19		Imports**	Imports**	Change 2018-19	
	2019	2020	2019/20	2019	2020	Value	Percent	2019	2020	Value	Percent
World	-854,371	-905,173	-50,802	1,643,161	1,431,406	-211,754	-12.9	2,497,531	2,336,579	-160,952	-6.4
Canada	-26,795	14,977	11,818	292,633	255,405	37,228	12.7	319,428	270,382	-49,046	-15.4
Mexico	-101,401	-112,723	-11,322	256,570	212,672	-43,898	-17.1	357,971	325,394	-32,577	-9.1
China	-345,204	-310,801	34,404	106,447	124,649	18,201	17.1	451,651	435,449	-16,202	-3.6
Japan	-69,189	-55,414	13,775	74,376	64,098	-10,279	-13.8	143,566	119,512	-24,054	-16.8
United Kingdom	5,858	8,803	2,945	69,078	59,010	-10,068	-14.6	63,219	50,206	-13,013	-20.6
Germany	-67,395	-57,325	10,070	60,112	57,795	-2,317	-3.9	127,507	115,120	-12,387	-9.7
Korea	-20,931	-24,802	-3,871	56,539	51,218	-5,321	-9.4	77,470	76,020	-1,450	-1.9
Netherlands	21,389	18,050	-3,339	51,108	45,521	-5,588	-10.9	29,719	27,470	-2,249	-7.6
Brazil	12,009	11,736	-274	42,853	35,047	-7,806	-18.2	30,844	23,311	-7,532	-24.4
Taiwan	-22,959	-29,931	-6,972	31,294	30,496	-797	-2.5	54,253	60,428	6,175	11.4
Belgium	14,561	6,735	-7,826	34,726	27,621	-7,105	-20.5	20,165	20,886	721	3.6
India	-23,406	-23,795	-389	34,288	27,395	-6,893	-20.1	57,694	51,190	-6,504	-11.3
France	-19,875	-15,630	4,245	37,718	27,380	-10,339	-27.4	57,593	43,009	-14,584	-25.3
Singapore	4,820	-3,753	-8,573	31,218	27,086	-4,131	-13.2	26,398	30,840	4,441	16.8
Hong Kong	26,048	16,053	-9,996	30,783	23,986	-6,796	-22.1	4,734	7,934	3,199	67.6
Australia	15,146	9,055	-6,091	25,990	23,489	-2,501	-9.6	10,845	14,434	3,590	33.1
Italy	-33,424	-29,543	3,881	23,839	19,922	-3,918	-16.4	57,263	49,465	-7,799	-13.6
Switzerland	-26,748	-56,738	-29,990	17,896	18,044	149	0.8	44,644	74,783	30,138	67.5
UAE	15,627	11,687	-3,940	19,975	14,759	-5,216	-26.1	4,347	3,071	-1,276	-29.3
Spain	-1,579	-2,420	-840	15,207	12,870	-2,337	-15.4	16,787	15,290	-1,497	-8.9
Chile	5,335	2,653	-2,682	15,728	12,767	-2,962	-18.8	10,393	10,113	-280	-2.7
Malaysia	-27,375	-31,666	-4,291	13,192	12,498	-693	-5.3	40,567	44,164	3,598	8.9
Colombia	580	1,286	706	14,746	12,063	-2,683	-18.2	14,166	10,777	-3,390	-23.9
Saudi Arabia	1,082	2,184	1,103	14,486	11,177	-3,309	-22.8	13,405	8,993	-4,412	-32.9
Thailand	-20,148	-26,430	-6,281	13,299	11,170	-2,129	-16.0	33,447	37,599	4,152	12.4
Israel	-5,103	-5,087	16	14,405	10,189	-4,216	-29.3	19,508	15,276	-4,232	-21.7
Turkey	-598	-1,008	-410	10,033	10,008	-25	-0.3	10,631	11,015	385	3.6
Vietnam	-55,769	-69,656	-13,886	10,860	9,989	-871	-8.0	66,630	79,645	13,015	19.5
Ireland	-52,836	-55,915	-3,079	9,058	9,558	500	5.5	61,894	65,473	3,579	5.8
Philippines	-4,136	-3,385	751	8,642	7,764	-878	-10.2	12,778	11,150	-1,629	-12.7
Peru	3,524	2,163	-1,361	9,668	7,686	-1,982	-20.5	6,144	5,522	-622	-10.1
Dominican Republic	3,641	2,420	-1,222	9,194	7,605	-1,589	-17.3	5,553	5,185	-368	-6.6
Indonesia	-12,414	-12,811	-397	7,733	7,416	-317	-4.1	20,147	20,227	80	0.4
Argentina	3,235	1,792	-1,443	8,151	5,950	-2,201	-27.0	4,917	4,158	-758	-15.4
Guatemala	2,823	2,017	-806	6,811	5,858	-953	-14.0	3,988	3,841	-147	-3.7
Panama	7,083	5,074	-2,009	7,534	5,767	-1,767	-23.4	452	694	242	53.6
Costa Rica	1,072	375	-697	6,219	5,733	-486	-7.8	5,147	5,358	211	4.1
Poland	-2,421	-3,643	-1,222	5,955	4,965	-990	-16.6	8,377	8,609	232	2.8
Russia	-16,475	-11,959	4,516	5,784	4,884	-901	-15.6	22,260	16,843	-5,416	-24.3
Egypt	2,331	2,580	249	5,484	4,759	-725	-13.2	3,154	2,179	-975	-30.9
Sweden	-7,763	-7,821	-58	4,368	4,690	322	7.4	12,130	12,511	380	3.1
South Africa	-2,432	-6,915	-4,484	5,368	4,455	-913	-17.0	7,800	11,370	3,570	45.8
Ecuador	-1,418	-1,695	-276	5,535	4,245	-1,290	-23.3	6,954	5,940	-1,014	-14.6
Honduras	616	347	-269	5,440	4,207	-1,233	-22.7	4,824	3,859	-964	-20.0
Austria	-7,453	-8,188	-735	5,709	3,432	-2,277	-39.9	13,162	11,620	-1,542	-11.7
Qatar	4,763	2,235	-2,528	6,457	3,416	-3,042	-47.1	1,695	1,181	-514	-30.3
New Zealand	-166	-1,012	-846	3,948	3,197	-752	-19.0	4,114	4,208	94	2.3
Denmark	-7,815	-8,585	-771	3,195	3,058	-137	-4.3	11,010	11,643	634	5.8

Czech Republic	-2,734	-2,552	183	2,790	2,985	195	7.0	5,525	5,537	12	0.2
Pakistan	-1,274	-975	299	2,648	2,926	278	10.5	3,922	3,902	-21	-0.5
Norway	-2,618	-1,163	1,455	3,894	2,790	-1,104	-28.3	6,511	3,953	-2,558	-39.3
Nigeria	-1,410	1,304	2,714	3,200	2,788	-411	-12.9	4,610	1,485	-3,125	-67.8
El Salvador	889	711	-178	3,369	2,635	-735	-21.8	2,480	1,923	-557	-22.5
Morocco	1,913	1,251	-663	3,496	2,299	-1,197	-34.3	1,583	1,048	-535	-33.8
Kuwait	1,753	1,584	-170	3,171	2,241	-931	-29.3	1,418	657	-761	-53.7
Hungary	-3,396	-3,178	218	1,914	2,116	202	10.5	5,310	5,294	-16	-0.3
Bangladesh	-4,342	-4,231	111	2,339	1,844	-495	-21.2	6,681	6,075	-606	-9.1
Ukraine	1,059	533	-526	2,355	1,840	-515	-21.8	1,296	1,307	11	0.9
Portugal	-2,178	-2,236	-58	1,716	1,650	-65	-3.8	3,893	3,886	-8	-0.2
Finland	-4,616	-3,348	1,268	1,768	1,587	-181	-10.2	6,384	4,935	-1,449	-22.7
Nicaragua	-2,232	-2,135	97	1,652	1,430	-222	-13.5	3,884	3,564	-320	-8.2
Greece	-71	84	155	1,442	1,385	-57	-3.9	1,513	1,301	-212	-14.0
Luxembourg	1,286	860	-426	1,922	1,353	-569	-29.6	636	493	-143	-22.4
Jordan	-677	-545	133	1,493	1,325	-167	-11.2	2,170	1,870	-300	-13.8
Paraguay	1,946	1,125	-821	2,108	1,274	-834	-39.5	162	150	-12	-7.5
Uruguay	1,191	695	-496	1,617	1,250	-367	-22.7	519	555	36	6.8
Oman	777	316	-461	1,937	1,133	-804	-41.5	1,160	817	-343	-29.6
Lithuania	-174	-321	-147	934	1,019	85	9.1	1,108	1,339	232	20.9
Romania	-1,432	-1,219	213	949	914	-34	-3.6	2,381	2,133	-248	-10.4
Ethiopia	442	382	-60	1,014	907	-106	-10.5	572	525	-47	-8.2
Bahrain	357	248	-109	1,407	885	-521	-37.1	1,050	638	-412	-39.3
Ghana	-103	115	218	840	832	-8	-0.9	943	717	-226	-23.9
Algeria	-1,480	248	1,728	1,000	726	-274	-27.4	2,480	478	-2,001	-80.7
Angola	-420	-1	419	535	471	-64	-12.0	955	472	-483	-50.6
Bolivia	97	71	-27	552	451	-101	-18.4	455	380	-75	-16.5
Tunisia	-9	-135	-126	461	434	-27	-5.8	470	569	99	21.1
Bulgaria	-447	-473	-26	463	375	-88	-18.9	910	848	-62	-6.8
Kenya	-266	-198	68	401	371	-31	-7.6	667	569	-98	-14.7
Estonia	-592	-725	-134	410	345	-65	-15.9	1,002	1,071	69	6.9
Cambodia	-4,843	-6,234	-1,391	514	344	-170	-33.1	5,357	6,578	1,221	22.8
Burma	-474	-689	-215	347	338	-8	-2.4	821	1,028	207	25.2
Slovakia	-4,760	-4,683	77	389	337	-52	-13.5	5,149	5,020	-129	-2.5
Croatia	163	-283	-446	711	318	-393	-55.3	548	601	53	9.7
Slovenia	-619	-886	-266	344	308	-36	-10.6	963	1,193	230	23.9
Latvia	-263	-214	49	552	306	-246	-44.5	815	520	-294	-36.1
Cote d'Ivoire	-645	-673	-28	279	208	-70	-25.3	924	881	-43	-4.6
Malta	-28	-14	14	143	157	14	9.7	171	172	0	0.1
Brunei	246	36	-211	288	119	-169	-58.7	41	83	42	100.6
Cyprus	131	44	-87	204	103	-101	-49.5	73	59	-14	-19.1
Laos	-131	-80	51	17	25	8	45.0	148	105	-43	-29.0
European Union - 27	-184,341	-183,428	913	267,648	232,070	-35,578	-13.3	451,989	415,498	-36,491	-0.1

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	Exports*	Exports*	Change 2018-19		Imports**	Imports**	Change 2018-19	
	2018	2019	2018/19	2018	2019	Value	Percent	2018	2019	Value	Percent
World	300,364	287,466	-12,898	862,433	875,825	13,392	1.6	562,069	588,359	26,290	4.7
United Kingdom	18,233	15,984	-2,249	80,418	78,329	-2,089	-2.6	62,185	62,345	160	0.3
Canada	30,904	29,199	-1,705	68,937	67,748	-1,189	-1.7	38,033	38,550	517	1.4
Ireland	33,356	34,329	973	51,510	57,544	6,034	11.7	18,154	23,215	5,061	27.9
China	37,948	36,398	-1,550	57,060	56,537	-523	-0.9	19,112	20,140	1,028	5.4
Japan	11,307	14,227	2,920	46,656	50,052	3,396	7.3	35,350	35,825	475	1.3
Switzerland	18,772	21,796	3,024	41,880	46,838	4,958	11.8	23,108	25,042	1,934	8.4
Germany	2,888	1,719	-1,169	35,953	36,637	684	1.9	33,065	34,918	1,853	5.6
Mexico	5,129	3,115	-2,014	33,056	32,928	-128	-0.4	27,927	29,813	1,886	6.8
Brazil	20,104	17,768	-2,336	26,802	24,562	-2,240	-8.4	6,699	6,795	96	1.4
India	-5,664	-5,405	259	23,210	24,333	1,123	4.8	28,874	29,738	864	3.0
Korea	13,153	13,362	209	23,199	23,973	774	3.3	10,046	10,611	565	5.6
Singapore	12,816	13,443	627	22,720	23,690	970	4.3	9,904	10,247	343	3.5
France	2,438	1,966	-472	21,936	22,406	470	2.1	19,497	20,440	943	4.8
Australia	14,748	13,389	-1,359	23,071	22,030	-1,041	-4.5	8,323	8,641	318	3.8
Netherlands	6,633	5,376	-1,257	20,203	20,492	289	1.4	13,570	15,116	1,546	11.4
Hong Kong	2,585	2,665	80	13,757	14,234	477	3.5	11,172	11,568	396	3.5
Taiwan	3,247	3,678	431	10,741	11,037	296	2.8	7,494	7,359	-135	-1.8
Italy	-1,602	-2,499	-897	9,651	9,618	-33	-0.3	11,253	12,116	863	7.7
Saudi Arabia	6,824	7,885	1,061	8,404	9,366	962	11.4	1,579	1,481	-98	-6.2
Spain	643	856	213	7,499	8,679	1,180	15.7	6,856	7,823	967	14.1
Denmark	1,414	2,465	1,051	7,159	8,171	1,012	14.1	5,745	5,706	-39	-0.7
Argentina	5,602	4,995	-607	8,400	7,591	-809	-9.6	2,798	2,596	-202	-7.2
Luxembourg	6,248	5,833	-415	8,048	7,541	-507	-6.3	1,801	1,707	-94	-5.2
Colombia	3,252	2,735	-517	7,491	7,243	-248	-3.3	4,239	4,508	269	6.3
Sweden	2,859	3,324	465	6,677	6,668	-9	-0.1	3,818	3,343	-475	-12.4
Israel	-1,165	-1,622	-457	6,241	5,753	-488	-7.8	7,406	7,375	-31	-0.4
Chile	2,901	2,995	94	5,472	5,614	142	2.6	2,571	2,618	47	1.8
Belgium	691	1,157	466	5,933	5,600	-333	-5.6	5,243	4,444	-799	-15.2
Russia	3,177	3,375	198	4,899	5,136	237	4.8	1,722	1,760	38	2.2
Turkey	2,403	2,224	-179	4,249	4,175	-74	-1.7	1,846	1,951	105	5.7
Peru	1,777	2,632	855	3,639	4,037	398	10.9	1,862	1,405	-457	-24.5
Philippines	-1,665	-2,288	-623	3,370	3,445	75	2.2	5,036	5,734	698	13.9
Thailand	842	880	38	3,191	3,398	207	6.5	2,348	2,518	170	7.2
New Zealand	816	735	-81	3,123	3,232	109	3.5	2,307	2,496	189	8.2
Malaysia	1,521	706	-815	3,308	3,070	-238	-7.2	1,786	2,364	578	32.4
Norway	226	426	200	3,074	2,959	-115	-3.7	2,847	2,533	-314	-11.0
Indonesia	1,586	1,670	84	2,673	2,801	128	4.8	1,087	1,131	44	4.0
Dominican Republic	-2,741	-2,791	-50	2,473	2,684	211	8.5	5,214	5,475	261	5.0
South Africa	671	648	-23	2,578	2,639	61	2.4	1,907	1,991	84	4.4
Poland	510	314	-196	2,459	2,557	98	4.0	1,949	2,243	294	15.1
Vietnam	1,197	1,229	32	2,315	2,495	180	7.8	1,118	1,267	149	13.3
Panama	-276	-337	-61	2,316	2,366	50	2.2	2,591	2,703	112	4.3
Nigeria	1,771	1,661	-110	2,240	2,125	-115	-5.1	470	464	-6	-1.3
Finland	665	176	-489	1,880	1,984	104	5.5	1,215	1,808	593	48.8
Costa Rica	-1,353	-1,121	232	1,905	1,966	61	3.2	3,258	3,087	-171	-5.2
Austria	393	307	-86	1,877	1,789	-88	-4.7	1,484	1,482	-2	-0.1
Guatemala	530	388	-142	1,696	1,638	-58	-3.4	1,167	1,250	83	7.1
Greece	-1,927	-2,474	-547	1,675	1,593	-82	-4.9	3,601	4,067	466	12.9
Portugal	-55	-138	-83	1,443	1,583	140	9.7	1,498	1,721	223	14.9
El Salvador	783	724	-59	1,475	1,501	26	1.8	693	777	84	12.1
Malta	1,214	743	-471	1,561	1,408	-153	-9.8	347	666	319	91.9
Czech Republic	-375	-246	129	1,119	1,402	283	25.3	1,495	1,648	153	10.2

Hungary	315	410	95	1,214	1,363	149	12.3	899	954	55	6.1
Honduras	556	529	-27	1,271	1,294	23	1.8	715	765	50	7.0
Romania	216	190	-26	766	812	46	6.0	550	622	72	13.1
Morocco	279	9	-270	940	768	-172	-18.3	662	758	96	14.5
Jordan	105	103	-2	816	757	-59	-7.2	711	654	-57	-8.0
Bahrain	-118	-60	58	686	735	49	7.1	803	795	-8	-1.0
Cyprus	-266	1	267	388	681	293	75.5	655	679	24	3.7
Oman	320	398	78	503	571	68	13.5	183	173	-10	-5.5
Nicaragua	-9	-67	-58	437	398	-39	-8.9	446	465	19	4.3
Slovakia	155	189	34	343	373	30	8.7	188	184	-4	-2.1
Bulgaria	57	52	-5	347	354	7	2.0	290	303	13	4.5
Croatia	-47	-105	-58	254	264	10	3.9	301	369	68	22.6
Lithuania	177	148	-29	243	240	-3	-1.2	66	93	27	40.9
Latvia	113	113	0	204	206	2	1.0	90	93	3	3.3
Slovenia	124	105	-19	185	175	-10	-5.4	61	70	9	14.8
Estonia	100	45	-55	203	156	-47	-23.2	103	111	8	7.8
Brunei	43	54	11	57	68	11	19.3	13	14	1	7.7
European Union - 27	56,936	54,355	-2,581	190,730	200,296	9,566	5.0	133,794	145,941	12,147	9.1

US FDI Abroad for Given Trade Partners in Rank Order of FDI
(Values in Millions of Dollars)

Country	FDI*** 2018	FDI*** 2019	Percent Change 2018-19	FDI Area
World	5,801,025	5,959,592	2.7	U.S. direct investment in World is led by nonbank holding companies, manufacturing, and finance and insurance.
Netherlands	810,238	860,528	6.2	U.S. direct investment in Netherlands is led by nonbank holding companies, manufacturing, and finance and insurance.
United Kingdom	796,564	851,414	6.9	U.S. direct investment in United Kingdom is led by nonbank holding companies, finance and insurance, and manufacturing.
Luxembourg	726,121	766,099	5.5	U.S. direct investment in Luxembourg is led by nonbank holding companies, finance and insurance, and manufacturing.
Canada	368,498	402,255	9.2	U.S. direct investment in Canada is led by nonbank holding companies, manufacturing, and finance and insurance.
Ireland	410,636	354,940	-13.6	U.S. direct investment in Ireland is led by nonbank holding companies, information services, and finance and insurance.
Singapore	254,670	287,951	13.1	U.S. direct investment in Singapore is led by manufacturing, finance and insurance, and wholesale trade.
Switzerland	253,253	228,968	-9.6	U.S. direct investment in Switzerland is led by nonbank holding companies, manufacturing, and finance and insurance.
Australia	163,999	162,400	-1.0	U.S. direct investment in Australia is led by nonbank holding companies, mining, and manufacturing.
Germany	137,148	148,259	8.1	U.S. direct investment in Germany is led by nonbank holding companies, manufacturing, and wholesale trade.
Japan	113,254	131,793	16.4	U.S. direct investment in Japan is led by finance and insurance, manufacturing, and wholesale trade.
China	109,332	116,203	6.3	U.S. direct investment in China is led by manufacturing, wholesale trade, and finance and insurance.
Mexico	95,873	100,888	5.2	U.S. direct investment in Mexico is led by manufacturing, finance and insurance, and nonbank holding companies.
France	68,035	83,826	23.2	U.S. direct investment in France is led by manufacturing, finance and insurance, and nonbank holding companies.
Hong Kong	79,797	81,883	2.6	U.S. direct investment in Hong Kong is led by nonbank holding companies, manufacturing, and information services.
Brazil	79,032	81,731	3.4	U.S. direct investment in Brazil is led by manufacturing, finance and insurance, and mining.
Belgium	61,271	63,157	3.1	U.S. direct investment in Belgium is led by manufacturing, wholesale trade, and finance and insurance.
India	42,444	45,883	8.1	U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.
Spain	35,425	40,793	15.2	U.S. direct investment in Spain is led by manufacturing, nonbank holding companies, and professional, scientific, and technical services.
Korea	39,021	39,105	0.2	U.S. direct investment in Korea is led by manufacturing, nonbank holding companies, and finance and insurance.
Sweden	41,024	38,787	-5.5	U.S. direct investment in Sweden is led by nonbank holding companies, manufacturing, and finance and insurance.
Italy	33,080	34,900	5.5	U.S. direct investment in Italy is led by manufacturing, information services, and wholesale trade.
Israel	27,715	28,543	3.0	U.S. direct investment in Israel is led by manufacturing, professional, scientific, and technical services, and information services.
Norway	26,145	25,556	-2.3	U.S. direct investment in Norway is led by nonbank holding companies, mining, and information services.
Chile	25,986	25,084	-3.5	U.S. direct investment in Chile is led by mining, finance and insurance, and manufacturing.
Thailand	16,952	17,738	4.6	U.S. direct investment in Thailand is led by manufacturing, wholesale trade, and depository institutions.
Taiwan	16,562	17,353	4.8	U.S. direct investment in Taiwan is led by manufacturing, finance and insurance, and wholesale trade.
UAE	17,437	17,153	-1.6	U.S. direct investment in United Arab Emirates is led by mining, wholesale trade, and manufacturing.
Russia	14,071	14,439	2.6	U.S. direct investment in Russia is led by manufacturing, wholesale trade, and information services.
Qatar	14,151	14,198	0.3	
Indonesia	10,240	12,151	18.7	U.S. direct investment in Indonesia is led by mining, manufacturing, and nonbank holding companies.
New Zealand	11,667	12,018	3.0	U.S. direct investment in New Zealand is led by manufacturing, professional, scientific, and technical services, and wholesale trade.
Egypt	10,781	11,000	2.0	There is no information on the distribution of U.S. FDI in Egypt.
Malaysia	10,867	10,849	-0.2	There is no information on the distribution of U.S. FDI in Malaysia.
Saudi Arabia	10,884	10,826	-0.5	U.S. direct investment in Saudi Arabia is led by nonbank holding companies, wholesale trade, and mining.
Argentina	9,522	10,698	12.4	U.S. direct investment in Argentina is led by manufacturing, manufacturing, and finance and insurance.
Poland	11,744	10,403	-11.4	U.S. direct investment in Poland is led by manufacturing, finance and insurance, and professional, scientific, and technical services.
Denmark	9,498	8,992	-5.3	U.S. direct investment in Denmark is led by nonbank holding companies, manufacturing, and wholesale trade.
Colombia	8,055	8,264	2.6	U.S. direct investment in Colombia is led by mining, manufacturing, and finance and insurance.
South Africa	7,313	7,812	6.8	U.S. direct investment in South Africa is led by manufacturing, finance and insurance, and wholesale trade.
Austria	6,740	7,643	13.4	U.S. direct investment in Austria is led by manufacturing, nonbank holding companies, and wholesale trade.
Peru	5,765	7,470	29.6	U.S. direct investment in Peru is led by mining, manufacturing, and wholesale trade.
Philippines	6,922	6,940	0.3	U.S. direct investment in The Philippines is led by nonbank holding companies, manufacturing, and wholesale trade.
Hungary	6,597	6,114	-7.3	U.S. direct investment in Hungary is led by nonbank holding companies, manufacturing, and information services.
Nigeria	4,501	5,469	21.5	There is no information on the distribution of U.S. FDI in Nigeria.
Panama	5,075	5,272	3.9	U.S. direct investment in Panama is led by nonbank holding companies, wholesale trade, and finance and insurance.
Cyprus	5,004	4,853	-3.0	
Czech Republic	4,515	4,815	6.6	U.S. direct investment in Czech Republic is led by manufacturing, information services, and professional, scientific, and technical services.
Finland	3,268	3,745	14.6	U.S. direct investment in Finland is led by manufacturing, information services, and professional, scientific, and technical services.

Romania	3,490	3,466	-0.7	
El Salvador	2,830	3,380	19.4	
Turkey	3,903	3,333	-14.6	U.S. direct investment in Turkey is led by manufacturing, wholesale trade, and depository institutions.
Algeria	2,978	2,749	-7.7	
Vietnam	2,849	2,615	-8.2	
Dominican Republic	2,162	2,604	20.4	U.S. direct investment in The Dominican Republic is led by manufacturing, information services, and wholesale trade.
Portugal	2,513	2,425	-3.5	U.S. direct investment in Portugal is led by wholesale trade, manufacturing, and professional, scientific, and technical services.
Ghana	1,649	1,602	-2.9	
Costa Rica	1,597	1,521	-4.8	U.S. direct investment in Costa Rica is led by manufacturing, professional, scientific, and technical services, and mining.
Honduras	850	1,281	50.7	U.S. direct investment in Honduras is led by manufacturing, information services, and professional, scientific, and technical services.
Uruguay	1,080	999	-7.5	
Greece	1,399	938	-33.0	U.S. direct investment in Greece is led by manufacturing, wholesale trade, and information services.
Slovakia	817	925	13.2	
Bulgaria	719	756	5.1	
Guatemala	733	746	1.8	
Ecuador	722	619	-14.3	U.S. direct investment in Ecuador is led by mining, finance and insurance, and wholesale trade.
Ukraine	532	596	12.0	
Malta	626	579	-7.5	
Bolivia	486	556	14.4	
Bahrain	442	510	15.4	
Bangladesh	512	493	-3.7	
Morocco	410	406	-1.0	
Kuwait	499	398	-20.2	
Kenya	367	353	-3.8	
Tunisia	302	320	6.0	
Slovenia	305	286	-6.2	
Pakistan	148	256	73.0	
Croatia	209	184	-12.0	
Jordan	180	179	-0.6	
Lithuania	176	171	-2.8	
Nicaragua	138	82	-40.6	
Estonia	82	68	-17.1	
Paraguay	163	45	-72.4	
Latvia	38	38	0.0	
Brunei	15	15	0.0	
Angola	127	-254	-300.0	
Cote d'Ivoire	-202	-495	145.0	
Oman	1,636	(D)		
Ethiopia	(D)	(D)		
Cambodia	187	(D)		
Burma	(D)	(D)		
Laos	(*)	(*)		
European Union - 27	2,380,718	2,447,690	3.0	U.S. direct investment in European Union (27) is led by nonbank holding companies, manufacturing, and finance and insurance.

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